



City of Gaithersburg

31 South Summit Avenue
Gaithersburg, Maryland 20877

Board of Appeals Session Agenda
City Hall - Council Chambers
Thursday, September 19, 2013, 7:30 PM

I. CALL TO ORDER

II. APPROVAL OF MINUTES

- A. Meeting held April 18, 2013

III. PUBLIC HEARINGS

- A. BOA-3288-2013 - Olga Carballo and Vilma Gonzalez for Willow Hair Studio

The application requests a Special Exception to permit a hair salon at 2 Maryland Avenue, Gaithersburg, Maryland. The property is located in the R-B (Residential Buffer) Zone. The special exception is allowed by Section 24-22 (c) of the City of Gaithersburg Zoning Ordinance (Chapter 24 of the City Code), subject to the review of the Board of Appeals.

- B. BOA-3280-2013 – Linda Stein for Zosimos Botanicals, LLC

The application requests a Special Exception to permit a home based business, material impact, at 28 Allenhurst Court, Gaithersburg, Maryland. The property is located in the R-90 Cluster Zone. The special exception is allowed by §24-216 of the City of Gaithersburg Zoning Ordinance (Chapter 24 of the City Code), subject to the review of the Board of Appeals.

IV. FROM STAFF

- A. Adopted Ordinances
- B. Draft Board of Appeals Rules of Procedure

V. ADJOURNMENT

To confirm accessibility accommodations, please contact Caroline Seiden at 301-258-6330, or email CSeiden@gaithersburgmd.gov.

Please turn off all cellular phones and pagers prior to the meeting. Hand held signs brought may not be displayed in a manner which disrupts the meeting, blocks the view of spectators or cameras and poses a safety concern [e.g., signs mounted on stakes]. Your cooperation is appreciated.

ANNOUNCEMENTS

The next Board of Appeals meeting will be held Thursday, October 17, 2013, at 7:30 PM.

Call to Order

Approval of Minutes

CITY OF GAITHERSBURG
31 S. Summit Avenue
Gaithersburg, MD 20877
Telephone: (301) 258-6330

MINUTES OF A MEETING OF THE BOARD OF APPEALS
April 18, 2013

Chairperson Harvey Kaye called the meeting to order at 7:32 p.m. Board Members present: Vice Chair Victor Macdonald and Board Member Robert Chiswell. Absent: Board Members Carol Rieg, Aaron Kotok and Alternate Gene Wasserman. Staff present: Caroline Seiden, Planner, and Trudy Schwarz, Community Planning Director.

I. APPROVAL OF MINUTES

Approval of the February 14, 2013 Minutes

Motion was made by Board Member Chiswell, seconded by Board Member Macdonald, that the minutes of the February 14, 2013 Board of Appeals Meeting be approved.

Vote: 3-0; Approved

II. AMENDMENT TO SPECIAL EXCEPTION

BOA-2063-2013 - Peter Joseph for Frank Joseph & Sons, Inc. (dba Jolly Shows)

The application requests an **Amendment to Special Exception A-555** to permit a temporary **carnival** from May 15 through May 26, 2013 on the northeast parking lot of Lakeforest Mall, 701 Russell Avenue, Gaithersburg, Maryland. The property is located in the C-2 (General Commercial) Zone. The special exception is allowed by Section 24-118(2) of the City of Gaithersburg Zoning Ordinance (Chapter 24 of the City Code), subject to the review of the Board of Appeals.

Planner Seiden introduced the Amendment to Special Exception review and then introduced Mr. Peter Joseph, President of Frank Joseph & Sons, Inc. Mr. Joseph reminded the Board that the temporary carnival had operated a year ago without incident and that he was requesting approval to conduct the carnival in the same manner in May 2013. Ms. Seiden confirmed that there had been no complaints regarding the prior year's carnival. She added that the Planning Commission had granted a parking waiver to the carnival for subsequent years provided that the scope of the carnival and the use of the property do not change. There was not additional testimony.

Motion was made by Vice Chair Macdonald, seconded by Board Member Chiswell, that Amendment to Special Exception BOA-2063-2013 be granted with three (3) conditions and the resolution be approved.

1. This special exception is granted for Frank Joseph & Sons, Inc. (dba Jolly Shows) only for the period from May 15, 2013 to May 26, 2013 and shall terminate after that time. Any subsequent carnivals shall require another public hearing by the Board of Appeals as an amendment to the special exception;
2. Operations shall terminate at 11:00 pm each evening unless a noise complaint is received, in which case, operations on evenings subsequent to the complaint shall terminate at 10:00 pm;
3. Applicant to obtain a City of Gaithersburg Special Events permit prior to May 15, 2013.

Vote: 3-0; Approved

III. FROM STAFF

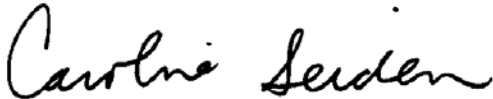
Board of Appeals Text Amendment Update

Staff distributed two draft memoranda that will be forwarded to the City Council to introduce and request sponsorship of text amendments for Chapters 16 and 24 of the City Code, respectively. The introduction/sponsorship is tentatively scheduled for May 20, 2013. A public hearing for the text amendments has been tentatively scheduled for July 1, 2013, with Planning Commission Recommendation on August 7, 2013 and Policy Discussion/Adoption by the Council on September 3, 2013.

IV. ADJOURNMENT

There being no more business before this meeting of the Board of Appeals, the meeting was adjourned at 7:51 p.m.

Respectfully submitted,



Caroline Seiden

Public Hearings

BOARD OF APPEALS PUBLIC HEARING SPECIAL EXCEPTION BOA-3288-2013

MEETING DATE: September 19, 2013

TITLE: Willow Hair Studio

ADDRESS: 2 Maryland Avenue

ZONE: R-B (Residential Buffer)

APPLICANT: Olga Carballo and Vilma Gonzalez

STAFF: Caroline Seiden, Planner



INDEX OF MEMORANDA
BOA-3288-2013

Exhibit	Description
1)	Application for Special Exception
2)	Applicant's Statement
3)	Site Plan
4)	Interior Floor Plan
5)	Letter of Intent to Lease
6)	Certified City of Gaithersburg Zoning Map showing location of site
7)	List of People to be Notified
8)	Property Notification List
9)	Notification Postcard as sent September 4, 2013
10)	Notice of Public Hearing as published on September 4, 2013
11)	Draft Resolution of Approval
12)	Confirmation of Sign Posting
13)	Planning Commission Staff Comments, September 11, 2013
14)	CPC from Planning Commission, September 12, 2013
15)	Email from James Cannistra to Trudy Schwarz, September 12, 2013
16)	Email from Trudy Schwarz to James Cannistra, September 12, 2013

BOA-3288-2013
8/13/13

P&CA

PLANNING AND CODE ADMINISTRATION

City of Gaithersburg · 31 South Summit Avenue · Gaithersburg, Maryland 20877 · Telephone: (301) 258-6330 · Fax: (301) 258-6336
plancode@gaitHERsbuRgmd.gov · www.gaitHERsbuRgmd.gov

BOARD OF APPEALS

SPECIAL EXCEPTION APPLICATION

In accordance with Chapter 24, Article VII, Sections 24-187 through 24-192 of the City Code

PROJECT NAME Willow Hair Studio
PROJECT ADDRESS 2 Maryland Ave. Gaithersburg Md 20877
LOCATION DESCRIPTION (if no address) _____
PETITIONER Olga Carballo and Vilma Gonzalez
BUSINESS NAME (if applicable) Willow Hair Studio
PRIMARY CONTACT Olga Carballo
PETITIONER ADDRESS 1305 Travis View Ct Gaithersburg Md 20879
TELEPHONE 301-366-3643 **E-MAIL ADDRESS** OLCarballo0605@hotmail.com

SPECIAL EXCEPTION TYPE

☒ New Special Exception ☐ Special Exception Amendment ☐ Radio or Television Station

REQUESTED USE:

- | | |
|---|--|
| <input type="checkbox"/> Alcoholic Beverage Manufacturing | <input type="checkbox"/> Laboratories |
| <input type="checkbox"/> Amusement Center | <input type="checkbox"/> Off Street or Off Site Parking Lots & Garages |
| <input type="checkbox"/> Assembling/Manufacturing | <input type="checkbox"/> Pawn Shops |
| <input type="checkbox"/> Bed and Breakfast | <input type="checkbox"/> Private Educational Institutions |
| <input type="checkbox"/> Child/Elderly Daycare with less than 8 people | <input type="checkbox"/> Public Utilities |
| <input type="checkbox"/> Child/Elderly Daycare with more than 8 people | <input type="checkbox"/> Tattoo/Body Piercing Parlor |
| <input type="checkbox"/> Commercial Parks/Outdoor Amusements/Golf Courses | <input type="checkbox"/> Telecomm Facility - Requires new pole/tower |
| <input type="checkbox"/> Group Residential Facilities | <input type="checkbox"/> All Other Telecommunication Facilities |
| <input type="checkbox"/> Hospital/Veterinary Hospital | <input checked="" type="checkbox"/> Other (please specify) <u>Hair Salon</u> |

NATURE OF APPLICATION

Briefly describe application request referencing appropriate section of City Code.

Beauty shop in accordance with section 24-22(c) of zoning ordinance
List case numbers of all applications filed within the past three (3) years pertaining to any portion of subject property.

To: The Board of Appeals

Planning and City Codes

City of Gaithersburg

Petitioner: Willow Hair Studio

(Vilma Gonzalez and Olga Carballo)

2 Maryland Ave Gaithersburg MD 20877

Special Exception Application for:

Willow Hair Studio.

Location:

The proposed space is located at 2 Maryland Ave Gaithersburg MD 20877. It is positioned to the left of Duron Paints and Walcoverings and across from Clinica Dental Hispana the Road behind it is Montgomery Ave. ½ of block west of N Frederick Rd (route 355)

Within The Space:

There are three floors within the house: The basement, The main floor(where all the hair services will be done), and the 2d floor .

As mentioned before the main floor will be use for hair services. This room is divided in 3 main areas: the main floor which in itself is divided into a shampoo/hair dryers area and styling centers, The reception/retail area , The Kitchen/color room where all the products to be used in chemical services will be stored. Then there are smaller rooms: the bathroom with handicapped access, The closet where customers will change clothes to get ready for chemical services, and the waiting area located at the front of the building. Finally there is the Heating and AC room.

Operation:

Willow Hair Studio is owned by Vilma Gonzalez and Olga Carballo. They are both salon owners in their own right, now coming together to open Willow Hair Studio a dream of theirs. Together they have more than 45 years of experience. Their Goal is to offer their clients a friendly and luxurious enviromen where They can enjoy their beauty treatments.

Vilma and Olga will as hairstylists and as managers alternately to oversee the smooth running of the Salon.

Furnishing:

There will be : 6 styling stations with 6 chairs.

2-3 shampoo stations with chairs

2-3 hairdryers

1 front desk

6-8 chairs for the waiting area

1 manicure table with chair

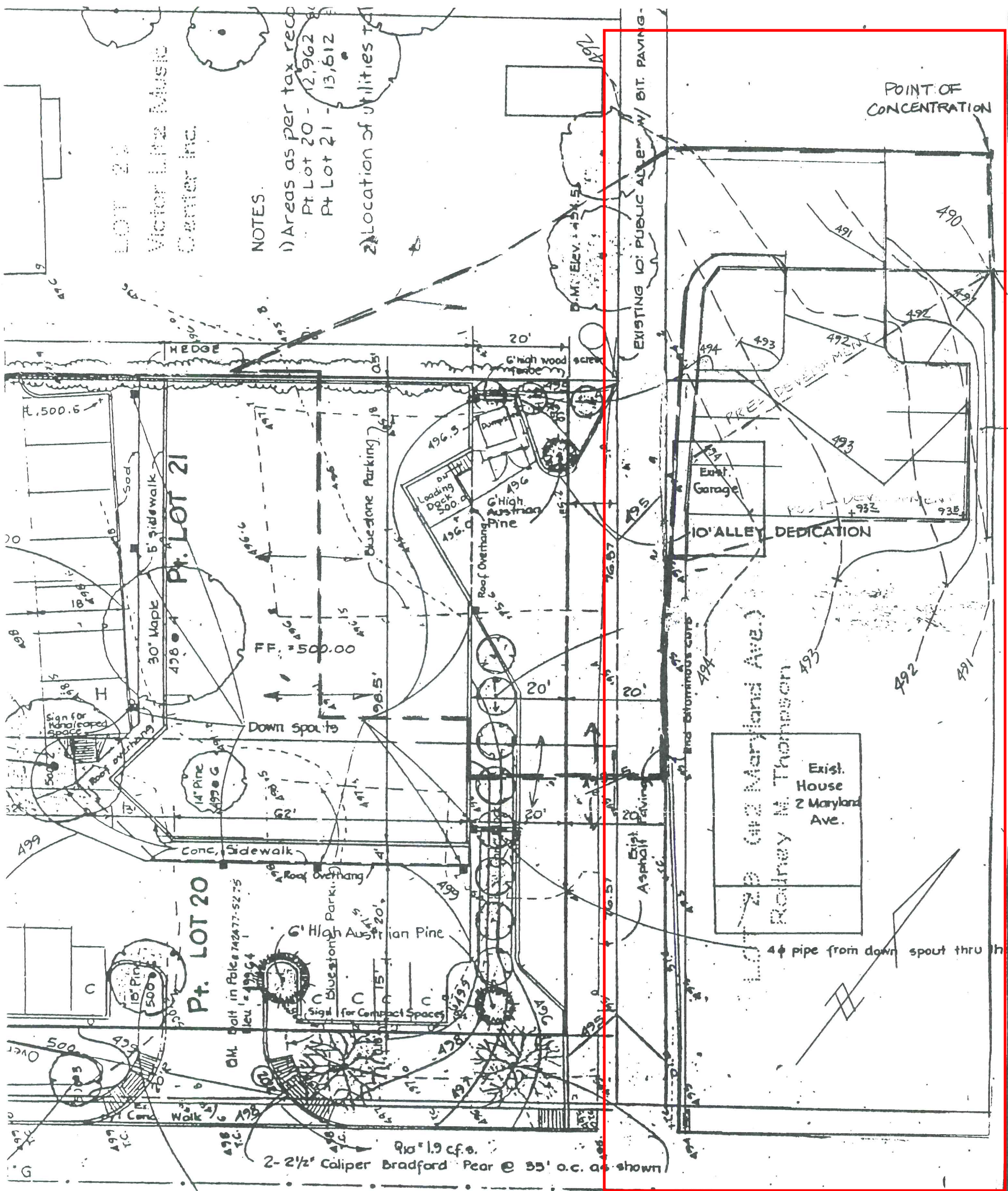
1 pedicure station with chair.

Employees:

There will be at least 4 to 6 hairdressers, 1 receptionists, 1 shampoo assistant and 1 manicurist.

Hours of Operation:

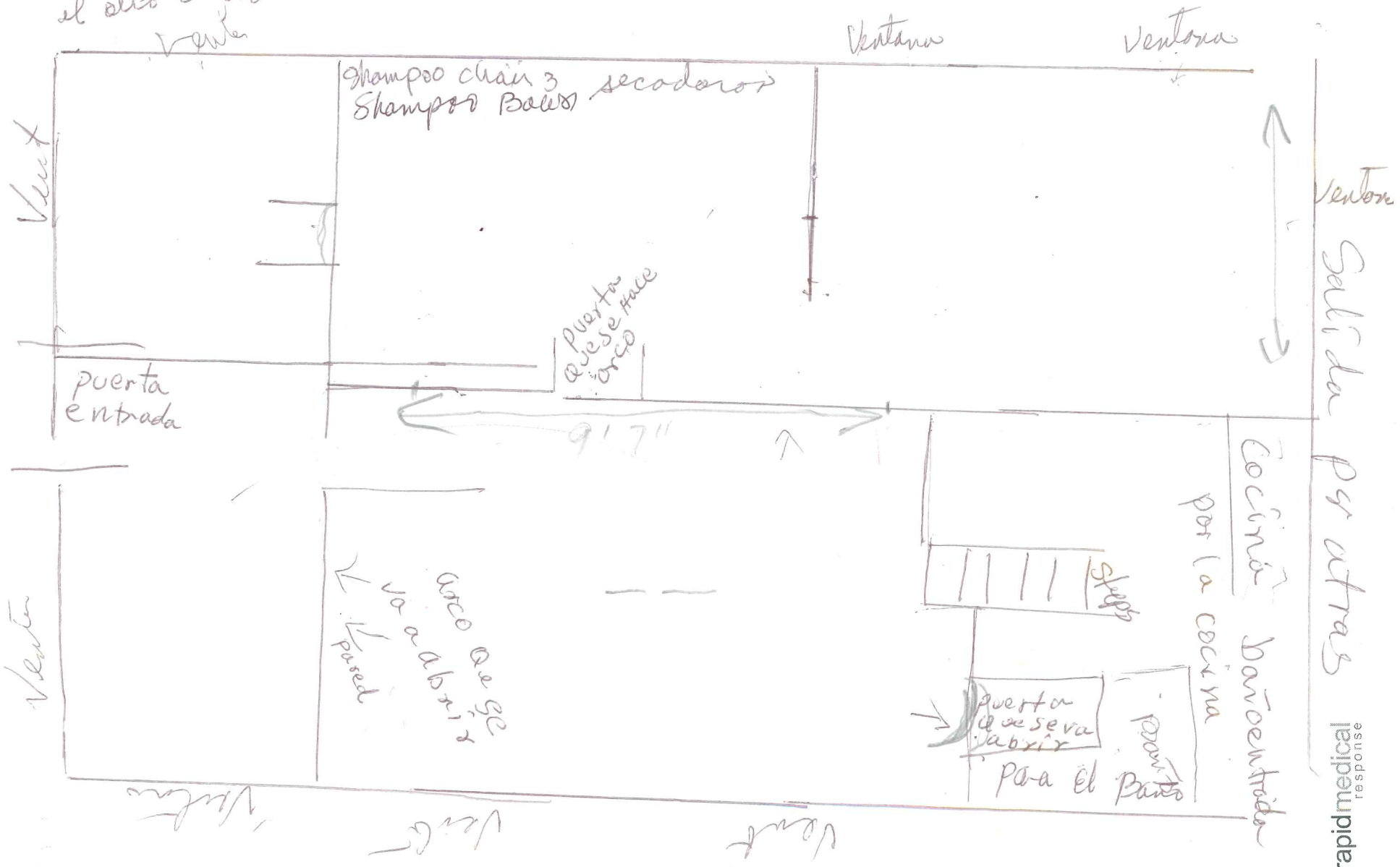
Monday –Thursday	10 - 6
Friday	9 - 7
Saturday	9 - 6
Sunday	11 -





la pared que se va a alir mide
139 Pulgadas - el Cuarto de Shampoo mide
13 pies de largo. y 14 de ancho igual que
el otro Cuarto

1 pie a cada lado
1 pie de el techo por
abajo



LETTER OF INTENT

To Whom it may Concern:

Please accept this letter as my intent to lease to Vilma Gonzalez and Olga Carbalka, the building located at 2 Maryland Ave., Gaithersburg MD 20877

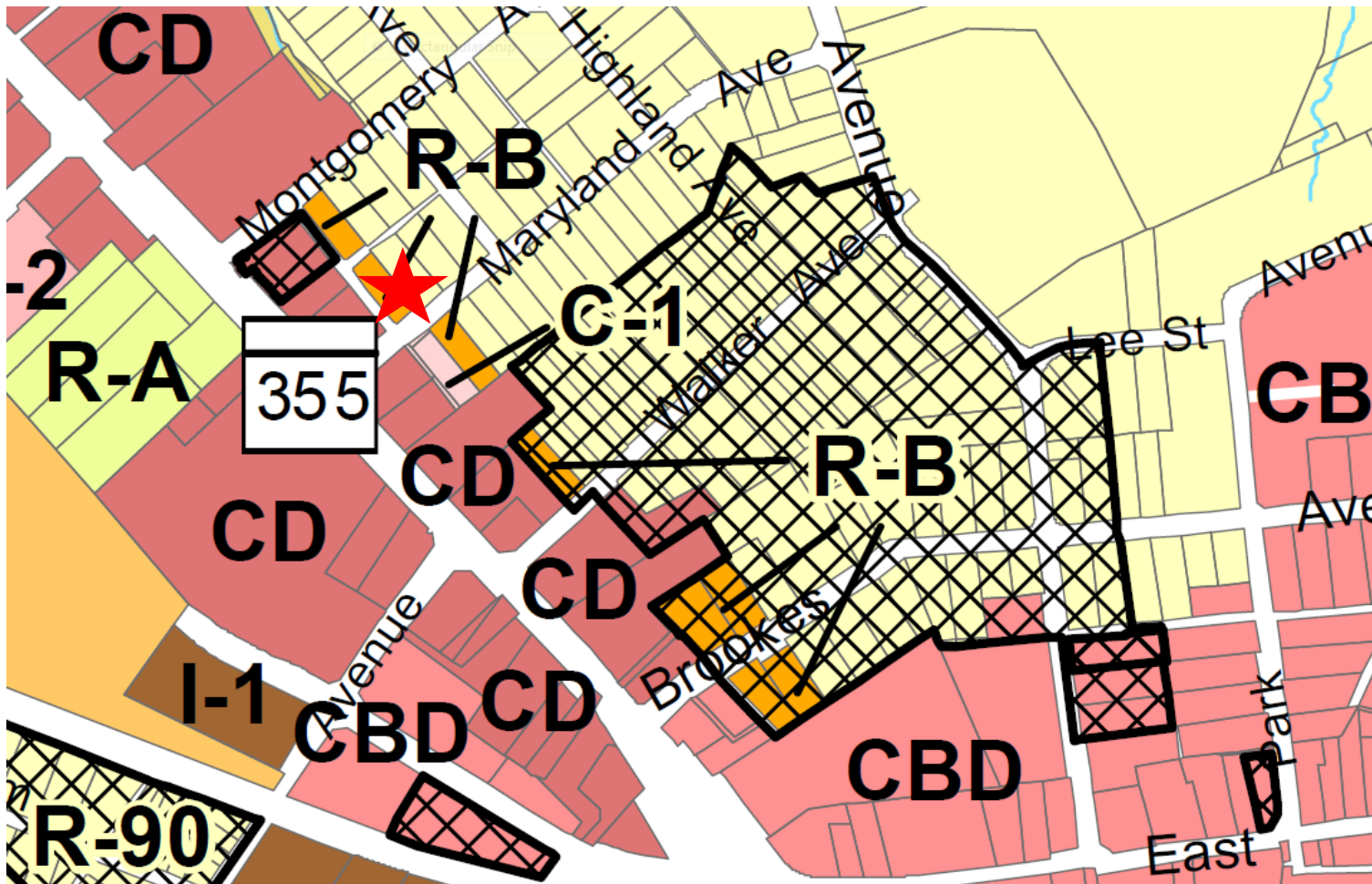
Date: 7/17/2013

BY:



GRIGOR SHIRINIAN

Board of Appeals
BOA-3288-2013
Exhibit #5



City of Gaithersburg Zoning Map



2 Maryland Avenue

LIST OF PEOPLE TO BE NOTYFIED

Duron Paints and Walcoverings

301 N Frederick Ave Gaithersburg MD 20877

Harford Car Care

2 Montgomery Ave Gaithersburg MD 20877

Clinica Dental Hispana

1 Maryland Ave Gaithersburg MD 20877

Board of Appeals
BOA-3288-2013
Exhibit #7

owner_name_line_1	owner_name_li	owner_address_line_1	owner_address_line_2	owner_address_city	owner_address_zip
TENNANT PROPERTIES LIMITED	LIABILITY CO	1 MONTGOMERY AVE		GAITHERSBURG	MD 20877
1 MARYLAND AVE INC		PO BOX 656		ROCKVILLE	MD 20848
A & F LLC		17216 BERCLAIR TER		ROCKVILLE	MD 20855
LOPEZ LEO W		3 MONTGOMERY AVE		GAITHERSBURG	MD 20877
F & L ASSOCIATES LLLP		C/O GREENTREE PARTNERS LLLP	PO BOX 501	FULTON	MD 20759
FARMERS BANKING & TRUST CO		C/O M & T BANK/CORP SERV FSU	1 M AND T PLZ FL 18	BUFFALO	NY 14203
OSBORN WILLIAM		4 MARYLAND AVE		GAITHERSBURG	MD 20877
DAVIE JOHN R & P G		3 MARYLAND AVE		GAITHERSBURG	MD 20877
Alan Rosen	President	17017 Sioux Lane		Gaithersburg	MD 20878
Andrea Liacouras	President	105 Twelve Oaks Court		Gaithersburg	MD 20877
April Day	Community Assn	18401 Woodfield Road, Suite H		Gaithersburg	MD 20879
Brian Weiblinger	President	147 Apple Blossom Way		Gaithersburg	MD 20878
Bruce Blumberg	Abaris Realty, Inc	12009 Nebel Street		Rockville	MD 20852
Carla Johnson	Bennington	29 Goodport Lane		Gaithersburg	Maryland 20878
Carrie Mathis	Quantum	5101 River Road, Suite 101		Rockville	Maryland 20816
Cheryl Berger	Association Boo	849-F Quince Orchard Boulevard		Gaithersburg	MD 20878
Chris Froehlich	Community Man	11300 Rockville Pike #907		Rockville	MD 20852
Claude Lumpkins	Vista Managem	1131 University Blvd West Suite 101		Silver Spring	MD 20902
Craig Chung	The Managemen	20440 Century Boulevard, Suite 100		Germantown	Maryland 20874
Dale Roan	Main Street Pro	9 Park Avenue		Gaithersburg	MD 20877
David Sapoznick	Summit Manag	3833 Farragut Avenue		Kensington	MD 20895
David Studley	President	716 Beacon Hill Terrace		Gaithersburg	MD 20878
Elaine Ziemke	The Managemen	20440 Century Boulevard, Suite 100		Germantown	Maryland 20874
Eric Cooper	Property Manag	955-A Russell Avenue		Gaithersburg	Maryland 20879
Frances Winter	President	2 Glazebrook Court		Gaithersburg	MD 20878
Glenn Loveland	Abaris Realty, Inc	12009 Nebel Street		Rockville	MD 20852
Guisela Deering	The Simmons M	8911 60th Avenue, 2nd Floor		College Park	MD 20740
Hank Jacob	Allied Realty	7605 Arlington Road		Bethesda	MD 20814
Ibrahim Dukuly	Lighthouse Prop	P.O. Box 5379		Takoma Park	MD 20913
Jackie Shaw	Vice President	5 Antioch Road		Gaithersburg	MD 20878
Jeff Kivitz	Main Street Pro	9 Park Avenue		Gaithersburg	MD 20877
Jesse James	Allied Realty	7605 Arlington Road		Bethesda	MD 20814
Jessica Cummings	IKO Real Estate,	3416 Olandwood Court, Suite 210		Olney	MD 20832

Jon May	President	8940 Edgewood Drive	Gaithersburg	Maryland	20877
Katrina Barrett	ComSource Mar	3414 Morningwood Drive	Olney	MD	20832
Kevin Kapp	Vista Managem	1131 University Blvd West Suite 101	Silver Spring	MD	20902
Kim Lee	Villa Ridge Conc	414 Girard Street	Gaithersburg	MD	20877
Lisa Franklin	PROCAM	14904 New Hampshire Avenue	Silver Spring	Maryland	20905
Lori Cohen	Armstrong Man	3949 Pender Drive #205	Fairfax	Virginia	22030
Matt Snyder	ComSource Mar	3414 Morningwood Drive	Olney	MD	20832
Mayea Henderson	Community Ma	11300 Rockville Pike #907	Rockville	MD	20852
Michael Eckloff	ComSource Mar	3414 Morningwood Drive	Olney	Maryland	20832
Michael LaPrade	ComSource Mar	3414 Morningwood Drive	Olney	MD	20832
Michele Kennedy	ComSource Mar	3414 Morningwood Drive	Olney	MD	20832
Mike Potter	M.T.M Manage	26223 Ridge Road	Damascus	MD	20872
Nancy Goglio	President	905 Wild Forest Drive	Gaithersburg	Maryland	20879
Patty Floyd	Paul Associates,	6935 Wisconsin Avenue Suite 400	Chevy Chase	MD	20815
Peggy Toland	Community Ass	15742 Crabbs Branch Way	Derwood	MD	20855
Peyton Harris	Capital Manage	12011 Lee Jackson Highway #350	Fairfax	VA	22033
Patricia Caudle	I&O Real Estate,	3416 Olandwood Court, Suite 210	Olney	MD	20832
Patricia Fox	Kentlands Citize	485 Tschiffely Square Road	Gaithersburg	Maryland	20878
Richard Skobel	Main Street Pro	9 Park Avenue	Gaithersburg	MD	20877
Robert Fogel	Abaris Realty, In	12009 Nebel Street	Rockville	MD	20852
Ruchita Patel	The Managemen	20440 Century Boulevard, Suite 100	Germantown	Maryland	20874
Sandra Ewing	Vanguard Mana	PO Box 39	Germantown	MD	20875
Shireen Ambush	Abaris Realty, In	12009 Nebel Street	Rockville	MD	20852
Steve Leskowitz	The Managemen	20440 Century Boulevard, Suite 100	Germantown	Maryland	20874
Tom Armstrong	President	108 Longdraft Road	Gaithersburg	Maryland	20878



Gaithersburg

City of Gaithersburg
31 S. Summit Avenue
Gaithersburg MD 20877

NOTICE OF BOARD OF APPEALS MEETING
***THURSDAY, SEPTEMBER 19, 2013 at 7:30 PM**
City Hall Council Chambers
31 S. Summit Avenue, Gaithersburg MD 20877

You are receiving this postcard to inform you of a proposal for a special exception within 200 feet of your property or you have expressed an interest in the subject plan(s).

APPLICATION TYPE:	SPECIAL EXCEPTION REVIEW
FILE NUMBER:	BOA-3288-2013
LOCATION:	2 Maryland Avenue
PROPOSAL	Beauty Salon

In addition, the Planning Commission will be reviewing the above-referenced application on **Wednesday, September 11, 2013** at 7:30 p.m. in the location noted above.

For additional information, you may review the project file(s) at the Planning and Code Administration offices located at City Hall, 31 S. Summit Avenue, Gaithersburg Maryland between the hours of 8:00 am and 5:00 pm Monday through Friday. You may also refer to the City web site at www.gaithersburgmd.gov or contact us via telephone at 301-258-6330.

*Subject to Change

Notice - Board of Appeals Public Hearing: 2 Maryland Avenue, 9/19/2013

Posted 9/3/2013

CITY OF GAITHERSBURG
31 South Summit Avenue
Gaithersburg, Maryland 20877
Telephone: **301-258-6330**

BOARD OF APPEALS NOTICE OF PUBLIC HEARING

In accordance with Section 24-187 through 190 of the City of Gaithersburg Zoning Ordinance, the City of Gaithersburg Board of Appeals will conduct a Public Hearing at the time and place noted below.

Application Type:	SPECIAL EXCEPTION
File Number:	BOA-3288-2013
Location:	2 MARYLAND AVENUE
Petitioner:	OLGA CARBALLO AND VILMA GONZALEZ FOR WILLOW HAIR STUDIO
Development:	BEAUTY SALON
Day/ Date/Time:	THURSDAY, SEPTEMBER 19, 2013
Place:	COUNCIL CHAMBERS, GAITHERSBURG CITY HALL 31 SOUTH SUMMIT AVENUE

In accordance with Section 24-187 of the City of Gaithersburg Zoning Ordinance, the Board of Appeals will conduct a public hearing on the above-referenced application in the Council Chambers at City Hall, 31 South Summit Avenue, on Thursday, September 19, 2013 at 7:30 p.m. or as soon thereafter as this matter can be heard. In addition, the Planning Commission will be reviewing the above-referenced application on Wednesday, September 11, 2013 at 7:30 p.m. in the Council Chambers at City Hall, 31 South Summit Avenue.

The application requests a Special Exception to permit a beauty salon at 2 Maryland Avenue, Gaithersburg, Maryland. The property is located in the RB (Residential Buffer) Zone. The special exception is allowed by Section 24-22(c) of the City of Gaithersburg Zoning Ordinance (Chapter 24 of the City Code), subject to the review of the Board of Appeals.

Further information may be obtained from the Department of Planning and Code Administration at City Hall, 31 South Summit Avenue, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday.

CITY OF GAITHERSBURG
Caroline Seiden, Planner
Planning and Code Administration

Board of Appeals
BOA-3288-2013
Exhibit #10

LOCATION MAP



Receive City agendas, minutes and news via e-mail. Sign up for the myGaithersburg e-mail-based news service at www.gaithersburgmd.gov/myGaithersburg.

Comments or questions about this page?



Feedback

Copyright © 2013, City of Gaithersburg
A CHARACTER COUNTS! City

[Privacy Statement](#)

[TOP](#)

**BOARD OF APPEALS
RESOLUTION APPROVING**

A PETITION BY WILLOW HAIR STUDIO REQUESTING A SPECIAL EXCEPTION FOR A BEAUTY SALON AT 2 MARYLAND AVENUE, GAITHERSBURG, MARYLAND. THE PROPERTY IS LOCATED IN THE R-B (RESIDENTIAL BUFFER) ZONE AS ALLOWED BY SECTION 24-22(C) OF THE CITY OF GAITHERSBURG ZONING ORDINANCE (CHAPTER 24 OF THE CITY CODE).

BOA-3288-2013

OPINION

This matter has come before the Board of Appeals as a special exception petition by Olga Carballo and Vilma Gonzalez for Willow Hair Studio to permit a beauty salon at 2 Maryland Avenue, Gaithersburg, Maryland. The special exception is allowed by Section 24-22(c) of the City of Gaithersburg Zoning Ordinance (Chapter 24 of the City Code). The Board's authority in these matters is provided pursuant to Subtitle 3, Title 4, *Land Use Article*, of the Maryland Annotated Code and § 24-187(b) of the Zoning Ordinance (Chapter 24 of the City of Gaithersburg Code) which authorizes the Board to hear and decide only those special exceptions as the Board of Appeals is specifically authorized to pass on by the terms of this Chapter.

Operative Facts

Olga Carballo and Vilma Gonzalez, on behalf of Willow Hair Studio, originally filed the application and exhibits on August 13, 2013. The application requests a special exception for a beauty salon at 2 Maryland Avenue, Gaithersburg, Maryland in the R-B (Residential Buffer) Zone.

In accordance with Section 24-188(d), the Planning Commission reviewed the special exception request at their September 11, 2013 regularly scheduled meeting. Following testimony from both petitioners, the Planning Commission analyzed the application and made a recommendation to the Board of Appeals that the special exception be approved with three conditions:

1. This special exception is granted for the Willow Hair Salon only and shall terminate at the time of the expiration of their lease and/or any subsequent lease renewals.

Board of Appeals
BOA-3288-2013
Exhibit #11

2. Operating hours are limited to the hours specified in the applicant's statement (Exhibit #2).
3. Salon services are permitted on the first floor only.

The Board of Appeals held a public hearing on Thursday, September 19, 2013, at 7:30 p.m. at City Hall. Notice of the public hearing was posted on the City's web site and sent to the applicants and surrounding property owners on September 4, 2013. The property was properly posted as well.

The Board reviewed fourteen (14) exhibits, including the Applicant's statement, letter of intent to lease, and previously-approved site plan. Planner Seiden noted that the Planning Commission recommends approval of the petition with three conditions as stated above. Testimony was given by Ms. Carballo and Ms. Gonzalez concerning the operation of the beauty salon and its conformance to the standards for approval of the requested use. There was no testimony in opposition to the subject request.

Following the testimony and arguments, the Board closed the record and made a motion to approve the special exception.

Relevant Statutory Provisions

The following statutory provisions from the City Zoning Ordinance (Chapter 24 of the City of Gaithersburg Code) are among the provisions, which define the nature and extent, a special exception that may be granted by this Board and the criteria upon which they may be approved.

* * *

DIVISION 1A. GENERALLY

* * *

Sec. 24-22. Permitted and special exception uses.

(c) *Buffer zones.*

Use

* * *

Barber and beauty shops

* * *

Zone RB

*

P⁶ and SE

*

⁶Uses permitted only within the "Olde Towne District," subject to the provisions of section 24-161 of this chapter

* * *

ARTICLE VII. Board of Appeals.

* * *

Sec. 24-187. Powers and duties.

The Board of Appeals shall have the following functions, powers, and duties:

* * *

- (b) **Special Exceptions.** To hear and decide only those special exceptions as the board of appeals is specifically authorized to pass on by the terms of this chapter.

The Board of Appeals is empowered to prescribe appropriate conditions and limitations upon the approval of special exceptions. Special exceptions approved by the Board shall be implemented in accordance with the terms and/or conditions set forth in the Board's decision and shall include the requirement that the petitioner shall be bound by all of his testimony and exhibits of record, the testimony of his witnesses and representations of his attorneys, to the extent that such evidence and representations are identified in the board's opinion approving the special exception. Violation of such conditions and limitations shall be deemed a violation of this chapter and, further, shall constitute grounds for revocation of such special exception.

* * *

Sec. 24-189. Findings required.

* * *

- (b) *Special Exceptions.* A special exception may be granted when the Board of Appeals finds from the evidence of record that the proposed use:
- (1) Is a permissible special exception within the zone and that the application complies with all procedural requirements set forth in this article;
 - (2) Complies with all standards and requirements specifically set forth for such use as may be contained in this chapter and the development standards for the zone within which the intended use will be located;
 - (3) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood; and will cause no objectionable noise, vibrations, fumes, odors, dust, toxicity, glare or physical activity;

- (4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structure or conversion of existing structures; as well as the intensity and character of activity, traffic and parking conditions and number of similar uses;
- (5) Will be consistent with the master plan or other planning guides or capital programs for the physical development of the district;
- (6) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area;
- (7) Will be served by adequate public services and facilities, including police and fire protection, water and sanitary sewer, storm drainage, public roads and other public improvements; and
- (8) When located in a residential zone where buildings or structures are to be constructed, reconstructed or altered shall, whenever practicable, have the exterior appearance of residential buildings and shall have suitable landscaping, screening or fencing.

*

*

*

Sec. 24-191. Special exception implementation, modification, and abandonment.

- (a) The Board of Appeals shall prescribe a time limit in which the special exception is required to be completed. The Board of Appeals shall conduct a public hearing upon the failure to complete the special exception within the prescribed time and following the public hearing may terminate the special exception. The Board may, upon written request and for good cause shown, extend the time for completion of the special exception.
- (b) The Board of Appeals is authorized to amend or modify the terms or conditions of a special exception upon the request of the special exception holder or upon recommendation of any City department of the Planning Commission, or pursuant to a show cause hearing provided in section 24-192 of this Code. No public hearing shall be required unless the proposed modification will substantially change the nature, character or intensity of the use or materially impact the neighborhood in which such use is located. If the Board determines that a hearing is required, the notice and hearing provisions contained in section 24-188 of this Code shall apply.

Findings and Conclusions

Based on the petitioner's arguments, binding testimony, and evidence of record, the Board finds that the application proposes a beauty salon at 2 Maryland Avenue, Gaithersburg, Maryland. The location of the beauty salon is within the R-B (Residential Buffer) Zone and is allowed by special exception as stated in Section 24-22(c) of the Zoning Ordinance (Chapter 24 of the City Code).

The petitioner has shown that the proposed beauty salon will be within a 684 square foot area of an existing building. There is sufficient parking on site to accommodate the beauty salon. The beauty salon will operate between the hours of 10:00 a.m. and 6:00 p.m. Monday through Thursday, 9:00 am and 7:00 pm Friday, 9:00 am and 6:00 pm Saturday and 11:00 am and 5:00 pm Sunday.

The petitioner has shown that the beauty salon proposed will be located within the building shown on site plan S-813(R), approved by the Planning Commission in January 1987 for R-B commercial uses. The petitioner has stated that there will be no change to the exterior elevations of the existing building.

The Board finds that the applicant has proved that the application is permissible by Section 24-22(c) of the Zoning Ordinance and that it complies with the procedural requirements set forth in Article VII of the Zoning Ordinance provided for the review of special exceptions by the Board of Appeals. The proposed use is consistent with the City of Gaithersburg Land Use Master Plan.

The testimony of the petitioner has shown that such use will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood; and will cause no objectionable vibrations, fumes, odors, dust, toxicity, glare or physical activity. The testimony has shown that such use is in harmony with the general character of the neighborhood and will not adversely affect the character of activity, the traffic, and the parking conditions of the immediately surrounding uses. The applicant has shown that this use will also not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area.

In conclusion, the Board of Appeals has found that the petitioner has submitted sufficient evidence, arguments and testimony for the approval of a beauty salon.

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED by the Board of Appeals of the City of Gaithersburg on the 19th day of September, 2013, that Case BOA-3288-2013, the petition of Olga Carballo and Vilma Gonzalez for Willow Hair Studio, requesting a special exception for a beauty salon at 8 Brookes Avenue, Gaithersburg, Maryland, be APPROVED with the following conditions:

1. This special exception is granted for Willow Hair Studio only and shall terminate at the time of the expiration of their lease and/or any subsequent lease renewals.
2. Operating hours are limited to the hours specified in the applicant's statement (Exhibit #2).
3. Salon services are permitted on the first floor only.

Adopted unanimously by the Board of Appeals of the City of Gaithersburg on the 19th day of September 2013. Mr. Kaye, Mr. Macdonald, Mr. Chiswell, and Mr. Wasserman, being present and voting in favor of the action.

Harvey Kaye, Chairperson
Board of Appeals

DATE

THIS IS TO CERTIFY that the foregoing Resolution was adopted by the City of Gaithersburg Board of Appeals, in public meeting assembled, on the 19th day of September, 2013

Caroline Seiden, Planner
Staff Liaison to the Board of Appeals

Any decision by the City Board of Appeals may, within thirty (30) days after the decision is rendered be appealed by any person aggrieved by the decision of the Board and a part to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

The Board of Appeals may reconsider its decision in accordance with its Rules of Procedure upon the request of any party; provided such request is received by writing not more than ten (10) days from the date the Board of Appeals renders its final decision.

From: 3013663643@myboomobile.com
To: Caroline Salas
Subject: Fast!
Date: Tuesday, September 10, 2013 1:18:40 PM

Sent from my mobile. Enjoy.



STAFF COMMENTS FOR PLANNING COMMISSION

MEETING DATE: September 11, 2013

Sp. Exception: **BOA-3288-2013**

TITLE: Willow Hair Studio

REQUEST: **RECOMMENDATION TO THE BOARD
OF APPEALS**

ADDRESS: 2 Maryland Avenue

ZONE: R-B (Residential Buffer)

APPLICANT: Olga Carballo and Vilma Gonzalez

STAFF: Caroline Seiden, Planner

Enclosures:

Aerial Photograph
Staff Comments
Board of Appeals Case BOA-3288-2013 (Exhibit list provided)



Special Exception BOA-3288-2013
2 Maryland Avenue

STAFF COMMENTS

Olga Carballo and Vilma Gonzalez, on behalf of Willow Hair Studio, "the applicants" are requesting approval of a special exception to permit a beauty salon at 2 Maryland Avenue. The property is zoned R-B (Residential Buffer). No exterior changes to the building or site are proposed.

The applicant seeks to occupy the entire building, using only the first floor as the salon. The salon will include six styling station, one manicure table and one pedicure station.

Operating hours will be 10:00 am to 6:00 pm Monday through Thursday, 9:00 am to 7:00 pm Friday and 9:00 am to 6:00 pm on Saturdays.

The subject property 0.24 acres developed with a residential style structure. The property was initially developed as a residential property but was approved by the Planning Commission for reuse to office and storage in 1987 (S-813 (R)). Its most recent use was as a dental laboratory. The site is surrounded by properties in a variety of different zoning categories. To the northeast are single family residences in the R-90 Zone. Property to the northwest is zoned R-B and is developed with office. To the south and southeast are a variety of commercial properties in the CD and C-1 Zones was most recently occupied by a variety of office and commercial uses.

The applicants have indicated that the salon will lease the entire property but that the salon will operate on the first floor only. Five parking spaces are required for the 800 square foot first floor salon. The property maintains 6 parking spaces in the rear of the building accessible via a public alley adjacent to the property. A site plan completed when the property converted to commercial use is included as Exhibit #3.

Beauty salons are permitted by special exception in the RB Zone, Section 24-22(c) of the Zoning Ordinance. The petition complies with the requirements of this section and section 24-189(b) of the Zoning Ordinance. Staff has prepared a draft Resolution of Approval for the Board of Appeals which includes the following conditions:

1. This special exception is granted for Willow Hair Studio only and shall terminate at the time of the expiration of their lease and/or any subsequent lease renewals.
2. Operating hours are limited to the hours specified in the applicant's statement (Exhibit #2).
3. Salon Services are permitted on the first floor only.

STAFF RECOMMENDS THAT THE PLANNING COMMISSION recommend approval of the special exception to the Board of Appeals with the three (3) conditions as listed.

COMMUNICATION: PLANNING COMMISSION

MEMORANDUM TO: Board of Appeals

FROM: Planning Commission

VIA: Caroline Seiden, Planner

DATE: September 12, 2013

SUBJECT: BOA-3288-2013 - Olga Carballo & Vilma Gonzalez for Willow Hair Studio
Special Exception to permit a beauty salon at 2 Maryland Avenue, Gaithersburg, Maryland. The property is located in the RB (Residential Buffer) Zone. The special exception is allowed by § 24-22(c) of the City of Gaithersburg Zoning Ordinance (Chapter 24 of the City Code), subject to the review of the Board of Appeals

At its regular meeting on September 11, 2013, the Planning Commission made the following motion:

Commissioner Winborne moved, seconded by Vice-Chair Kaufman, to recommend Special Exception Case BOA-3288-2013 – Willow Hair Studio, for APPROVAL to the Board of Appeals, finding it in compliance with Zoning Ordinance §§ 24-22(c) and 24-189(b), with the following conditions:

1. This special exception is granted for Willow Hair Studio only and shall terminate at the time of the expiration of their lease and/or any subsequent lease renewals;
2. Operating hours are limited to the hours specified in the applicant's statement (Exhibit #2); and
3. Salon Services are permitted on the first floor only.

Vote: 5-0

Board of Appeals
BOA-3288-2013
Exhibit #14

From: [James Cannistra](#)
To: [Trudy Schwarz](#)
Subject: 2 maryland
Date: Thursday, September 12, 2013 5:02:43 PM

Ms Schwartz:

As a follow-up to our conversation I am concerned about granting the special exception for the potential beauty salon at 2 Maryland Avenue.

My concerns are as follows:

The hours of operation: Most beauty salons operate much later than 6: 00 monday through thursday. A firm commitment with no exceptions should be guaranteed in writing if this type of business is to be allowed. There were numerous problems associated with the hair salon(s) at the former 7-11 shopping centers in terms of safety, loitering, late hours, etc. I was very concerned with the discussion at the public hearing that the definition of hours seemed to be very open-ended and there was talk already about flexibility, extensions, etc.

They state under the employees section there will be " **at least** 4 to 6 hairdressers, 1 receptionists, 1 shampoo assistant and 1 manicurist. This seems to be a large number of people for the parking spacing available and does not seem to fit the "residential buffer" objective.

Hours of operation: The hours for Sunday are not clear -- the document states 11- (no timeframe is specified)

Property maintenance has been an ongoing issue of concern and i would hope there would be a commitment to maintain this property.

Lastly I was suprised to find out this application was discussed at the Planning Commissioners meeting and the only Maryland Avenue residents to be notified were residents of 3 and 4 Maryland Avenue. I believe the notification announcements should have been sent to property owners at least on the contiguous block. It seems as if there are other property owners within 200' that also should have been notified and given an opportunity to testify at the hearing.

This email is being sent after a very quick review and our discussion. I will watch the commissioners hearing later and provide additional comments as needed.

thank you

Jim Cannistra

From: [Trudy Schwarz](#)
To: [James Cannistra](#)
Cc: [Caroline Seiden](#)
Subject: RE: 2 Maryland
Date: Thursday, September 12, 2013 5:12:40 PM

Jim,

Thanks for your e-mail, staff will include it in the Board of Appeals Record and package. I just left a message on your home answering machine. I checked the Code requirements for Special Exceptions and notification for Special Exceptions is required to be sent to adjoining and confronting properties, not the 200 feet that we discussed earlier which is the requirement for Zoning changes.

Trudy

Trudy M. Walton Schwarz, CFM
Community Planning Division Chief
Planning and Code Administration
City of Gaithersburg
31 South Summit Avenue
Gaithersburg, Maryland 20877
Phone: 301-258-6330
Fax: 301-258-6336
City Web Site: www.gaithersburgmd.gov

Get weekly e-mail updates of upcoming City meetings and events by registering for myGaithersburg at www.gaithersburgmd.gov/mygaithersburg

The opinions expressed in this message are not necessarily those of the City of Gaithersburg Staff, Mayor or Council

From: James Cannistra [mailto:jcannistra@aol.com]
Sent: Thursday, September 12, 2013 5:02 PM
To: Trudy Schwarz
Subject: 2 maryland

Ms Schwartz:

As a follow-up to our conversation I am concerned about granting the special exception for the potential beauty salon at 2 Maryland Avenue.

My concerns are as follows:

The hours of operation: Most beauty salons operate much later than 6: 00 monday through thursday. A firm commitment with no exceptions should be guaranteed in writing if this type of business is to be allowed. There were numerous problems associated with the hair salon(s) at the former 7-11 shopping centers in terms of safety, loitering, late hours, etc. I was very concerned with the discussion at the public hearing that the definition of hours seemed to be very open-ended and there was talk already about flexibility, extensions, etc.

They state under the employees section there will be " **at least** 4 to 6 hairdressers, 1 receptionists, 1 shampoo assistant and 1 manicurist. This seems to be a large number of people for the parking spacing available and does not seem to fit the "residential buffer" objective.

Hours of operation: The hours for Sunday are not clear -- the document states 11- (no timeframe is specified)

Property maintenance has been an ongoing issue of concern and i would hope there would be a commitment to maintain this property.

Lastly I was suprised to find out this application was discussed at the Planning Commissioners meeting and the only Maryland Avenue residents to be notified were residents of 3 and 4 Maryland Avenue. I believe the notification announcements should have been sent to property owners at least on the contiguous block. It seems as if there are other property owners within 200' that also should have been notified and given an opportunity to testify at the hearing.

This email is being sent after a very quick review and our discussion. I will watch the commissioners hearing later and provide additional comments as needed.

thank you

Jim Cannistra

BOARD OF APPEALS PUBLIC HEARING SPECIAL EXCEPTION BOA-3280-2013

MEETING DATE: September 19, 2013

TITLE: **Zosimos Botanicals, LLC**

ADDRESS: 28 Allenhurst Court

ZONE: R-90 Cluster

APPLICANT: Linda Stein

STAFF: Caroline Seiden, Planner



INDEX OF MEMORANDA
BOA-3280-2013

Exhibit	Description
1)	Application for Special Exception
2)	Applicant's Statement
3)	Supplemental Statement Regarding Square Footage
4)	House Location Plat
5)	Photograph – 28 Allenhurst Court
6)	Employee Schedules
7)	United States Postal Service Shipment Receipts
8)	Sales and Use Tax License
9)	Trade Name Registration
10)	Home Based Business License Application
11)	Petition in Support of Home Based Business
12)	Letter from John and Marcella Hickey, 25 Allenhurst Court
13)	Letter from Lisa Brown, 26 Allenhurst Court
14)	Email from Karen Long, 30 Allenhurst Court
15)	Letter from Josh and Julia Rosenbaum, 419 Bostwick Lane
16)	Certificate of Appreciation from Coalition for Consumer Information on Cosmetics
17)	Gaithersburg Environmental Awards
18)	Certified City of Gaithersburg Zoning Map
19)	Aerial Photograph, 28 Allenhurst Court and Vicinity
20)	List of Property Owners Notified
21)	Notification Postcard as sent September 4, 2013
22)	Confirmation of Sign Posting, August 30, 2013
23)	Notice of Public Hearing as Shown on City Web Site, September 3, 2013
24)	Revised Employee Schedule

INDEX OF MEMORANDA
BOA-3280-2013

Exhibit	Description
25)	Memorandum from Code Administration Officer Allen Meyer, September 6, 2013
26)	Draft Resolution of Approval
27)	Planning Commission Staff Comments, September 11, 2013
28)	CPC from Planning Commission, September 12, 2013

\$ 500

P&CA

PLANNING AND CODE ADMINISTRATION

City of Gaithersburg · 31 South Summit Avenue · Gaithersburg, Maryland 20877 · Telephone: (301) 258-6330 · Fax: (301) 258-6336
plancode@gailthersburgmd.gov · www.gaithersburgmd.gov

BOARD OF APPEALS

SPECIAL EXCEPTION APPLICATION

In accordance with Chapter 24, Article VII, Sections 24-187 through 24-192 of the City Code

PROJECT NAME

PROJECT ADDRESS 28 Allenhurst Court, Gaithersburg, MD 20878-1990

LOCATION DESCRIPTION (if no address) _____

PETITIONER Linda Stein

BUSINESS NAME (if applicable) Zosimos Botanicals LLC

PRIMARY CONTACT Linda Stein

PETITIONER ADDRESS 28 Allenhurst Ct., Gaithersburg, MD 20878-1990

TELEPHONE _____ **E-MAIL ADDRESS** linda@zosimosbotanicals.com

SPECIAL EXCEPTION TYPE

☒ New Special Exception ☐ Special Exception Amendment ☐ Radio or Television Station

REQUESTED USE:

- | | |
|---|--|
| <input type="checkbox"/> Alcoholic Beverage Manufacturing | <input type="checkbox"/> Laboratories |
| <input type="checkbox"/> Amusement Center | <input type="checkbox"/> Off Street or Off Site Parking Lots & Garages |
| <input type="checkbox"/> Assembling/Manufacturing | <input type="checkbox"/> Pawn Shops |
| <input type="checkbox"/> Bed and Breakfast | <input type="checkbox"/> Private Educational Institutions |
| <input type="checkbox"/> Child/Elderly Daycare with less than 8 people | <input type="checkbox"/> Public Utilities |
| <input type="checkbox"/> Child/Elderly Daycare with more than 8 people | <input type="checkbox"/> Tattoo/Body Piercing Parlor |
| <input type="checkbox"/> Commercial Parks/Outdoor Amusements/Golf Courses | <input type="checkbox"/> Telecomm Facility - Requires new pole/tower |
| <input type="checkbox"/> Group Residential Facilities | <input type="checkbox"/> All Other Telecommunication Facilities |
| <input type="checkbox"/> Hospital/Veterinary Hospital | <input type="checkbox"/> Other (please specify) _____ |

NATURE OF APPLICATION

Briefly describe application request **referencing appropriate section of City Code.**

Request approval of Home Based Business License for location with over 1 non-resident employee under Ch. 24-216(b)(i)

List case numbers of all applications filed within the past three (3) years pertaining to any portion of subject property.

N/A

THE CHECKLIST BELOW IS A GENERAL GUIDE FOR ITEMS THAT ARE TYPICALLY REQUIRED FOR APPLICATIONS. PLEASE REFER TO CHAPTER 24, ARTICLE VII, SECTION 24-188 (c) (1) OF THE CITY CODE FOR COMPLETE REQUIREMENTS OR CONTACT A BOARD OF APPEALS STAFF MEMBER AT 301-258-6330 FOR FURTHER CLARIFICATION

SUBMITTAL REQUIREMENTS

- ☐ 1. Petitioner Statement per Section 24-188 (c)(1) b and g.
- ☐ 2. Plans and Drawings per Section 24-169(c), One (1) hard copy, One (1) digital copy (DWF preferred) or PDF
- ☐ 3. List of Abutting and Confronting Property Owners
- ☐ 4. Zoning Map
- ☐ 5. List of Additional Parties to be Notified

Optional Submittals

- ☐ 1. Lease/Authorization Letter (required if not owner) N/A
- ☐ 2. Master Plan Maps
- ☐ 3. Additional Petitioner Exhibits

STATEMENT OF APPLICANT LINDA STEIN FOR SPECIAL EXCEPTION UNDER ARTICLE X, SEC. 24-216

WHEREAS, I am a Member of Zosimos Botanicals LLC ("Zosimos Botanicals"), a Home Based business operating at 28 Allenhurst Court, Gaithersburg, MD 20878. Zosimos Botanicals is an organic and natural makeup company where everything is handmade. Due to its minimal impact on the environment, judicious use of natural resources and dedication to social causes, Zosimos Botanicals has been granted Environmental Awards from the City annually since 2009. Zosimos Botanicals requests that a Special Exception be granted, as the evidence of record shows that the use meets the required elements as follows.

- (1) Zosimos Botanicals is a Home Based Business permitted within the residential zone where it is located and complies with all procedural requirements set forth in Article X;
- (2) Zosimos Botanicals complies with all standards and requirements specifically set forth for use as a Home Based Business as may be contained in Chapter 24 and the development standards for the zone within the use is located;
- (3) Zosimos Botanicals is not detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood; and causes no objectionable noise, vibrations, fumes, odors, dust, toxicity, glare or physical activity. The entire one room studio is limited to the sub-basement portion of the single family house. All products are handmade in an eco-friendly environment using nontoxic raw materials. There are no chemicals present;
- (4) Zosimos Botanicals is in harmony with the general character of the neighborhood. No new structure or conversion of existing structures is proposed. No change to the exterior is proposed. Zosimos Botanicals is in harmony with the intensity and character of activity, traffic and parking conditions and number of similar uses. Zosimos Botanicals has no signage or branded vehicles. It is not a retail location, but an e-tailer that sends out packages with the US Postal Service mail carrier. No additional carrier comes to Zosimos Botanicals for outgoing packages, as the mail carrier picks up the parcels at the same time the mail is delivered. A handful of times annually, less than 10, we allow a local customer to pick up an order to avoid shipping charges. The studio is closed after 5pm weekdays and on weekends, thus no non-resident employees are present during those times/days. Zosimos Botanicals sells products at local stores, which are delivered and not picked up, causing no additional traffic.

There are no non-resident employees that work a 40 hour week. One non-resident employee works M-F from 10-4 and parks in the driveway. Another non-resident employee works on commission only instead of hourly. She comes as needed, part-time, less than 10 hours per week during studio hours and parks in the street in front of the house. The location has an attached two car garage. My minivan is parked in the garage. In Summertime we have an Intern from Liberty's Promise, a 501c(3) who gets a stipend from them, she works 20 hours per week for 8 weeks per the internship and is not a Zosimos Botanicals employee. The intern is a student

from a local high school that takes the bus. She works four days a week, her schedule is Tu-Th 10-3:30 and F 10-1:30. During the school year, we employ high school students, typically former interns, who walk from Quince Orchard High School. High school students during the school year typically work 3:30-5 two to three days a week. As they are busy with extracurricular and homework, we usually have had two share one position so one comes each day Tu/Th and M/W/F unless no one wants to work on Fridays;

- (5) Zosimos Botanicals is consistent with the Master Plan which designates its location to be residential land use, as well as other planning guides or capital programs for the physical development of the district;
- (6) Zosimos Botanicals does not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area. The neighbors all agree that Zosimos Botanicals does not adversely affect the neighborhood. In support of the special exception, many residents of Allenhurst Court have signed a petition and all of the adjacent residents to the Stein home have provided letters;
- (7) Zosimos Botanicals is served by adequate public services and facilities, including police and fire protection, water and sanitary sewer, storm drainage, public roads and other public improvements; and
- (8) There are no buildings or structures to be constructed, reconstructed or altered. The existing exterior appearance of the residential building has suitable landscaping, screening or fencing.

Zosimos Botanicals meets all of the requirements for a Minor Impact business except the existence of more than 1 non-resident employee. Zosimos Botanicals requires more than one non-resident employee to continue operating. As Zosimos Botanicals meets the standard by not creating a discernible adverse impact on the adjacent properties or neighborhood, I respectfully request that a Special Exception be granted and a Home Based Business License issued.

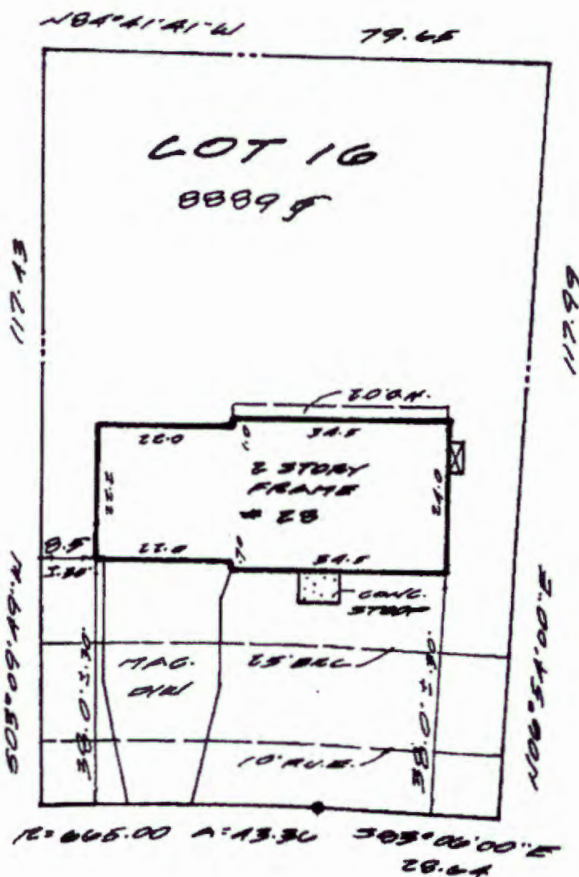
From: linda@zosimosbotanicals.com
To: [Caroline Seiden](#)
Cc: [Henry Marraffa - External](#)
Subject: Square footage of Zosimos Botanicals
Date: Wednesday, August 28, 2013 3:22:56 PM

Carolyn, I found the County record of my residence, which shows the upper two floors as being 1,700 sq.ft. It doesn't reflect a finished basement. Estimating the sq.ft based on this, would be about 800 sq.ft given that part of the space is the laundry room, stairwell and HVAC.

I hope this is sufficient for the Board of Appeals procedure.

Linda

Linda Stein, Esq.
Formulator/Activist
Zosimos Botanicals LLC
<http://www.zosimosbotanicals.com>
<http://www.facebook.com/zosimosbotanicals>



ALLENHURST COURT

LOCATION DRAWING
LOT 16 BLOCK C
FLAT 7
FERNSHIRE FARMS

Surveyor's Certification

I hereby certify that the survey shown hereon is correct to the best of my knowledge and that, unless noted otherwise, it has been prepared utilizing description of record. This survey is not a boundary survey and the location or existence of property corners is neither guaranteed nor implied. Fence lines, if shown, are approximate in location. This property does not lie within a 100 year flood plain according to FEMA Insurance maps unless otherwise shown hereon. Building restriction lines shown as per available information.

Stephen J. Wenthold
Stephen J. Wenthold, Maryland RLS Reg. No.

Stephen J. Wenthold, Maryland RLS Reg. No. 10767

NOTE: This plat is of benefit to a consumer only insofar as it is required by a lender or a title insurance company or its agent in connection with contemplated transfer, financing or refinancing. This plat is not to be relied upon for the establishment or location of fences, garages, buildings, or other existing or future improvements. This plat does not provide for the accurate identification of property boundary lines, but such identification may not be required for the transfer of title or securing financing or refinancing.

Board of Appeals
BOA-3280-2013
Exhibit #4

Date: 4-19-96

Scale: 1" = 30'

Plat Book: 124

Plat No.: 14565

Work Order: 96-0897



Meridian Surveys, Inc.
2401 Research Boulevard
Rockville, MD 20850
(301) 840-0025

Address: 28 ALLENHURST COURT

District: 9

Jurisdiction: MONTGOMERY COUNTY, MD.

NO TITLE REPORT FURNISHED



FALL SCHEDULE

	Erika	Linda S.*	Andrea
WEEK 1			
Monday	10-5	9:30-2:30	PRN
Tuesday	10-3	9:30-12:30, 1:15-2:30	PRN
Wednesday	11-5	9:30-2:30	PRN
Thursday	10-3	9:30-2:30	PRN
Friday	10-5	9:30-2:30	PRN
WEEK 2			
Monday	10-3	9:30-2:30	PRN
Tuesday	10-3	9:30-12:30, 1:15-2:30	PRN
Wednesday	11-5	9:30-2:30	PRN
Thursday	10-3	9:30-2:30	PRN
Friday	10-3	9:30-2:30	PRN

* 3pm -12am PRN

© 2013 Zosimos Botanicals LLC

SUMMER SCHEDULE

	Erika	Linda S.	Andrea	Intern
Monday	10-4	11-5	PRN	
Tuesday	10-4	11-5	PRN	10-3:30
Wednesday	11-4	11-5	PRN	10-3:30
Thursday	10-4	11-5	PRN	10-3:30
Friday	10-4	11-5	PRN	10-1:30

© 2013 Zosimos Botanicals LLC



Shipment Confirmation Acceptance Notice

A. Mailer Action

Note To Mailer: The labels and volume associated to this form online, must match the labeled packages being presented to the USPS® employee with this form.

Shipment Date: 07/29/2013
Shipped From:
 Zosimos Botanicals LLC
 28 ALLENHURST CT
 GAITHERSBURG MD 20878-1990

Type of Mail	Volume
Priority Mail Service®	2
Express Mail Service®*	0
International Mail*	0
Other	5
Total Volume	7

*Start time for products with service guarantees will begin when mail arrives at the local Post Office™ and items receive individual processing and acceptance scans.

B. USPS Action

- **USPS EMPLOYEE:** Please scan upon pickup or receipt of mail. Leave form with customer or in customer's mail receptacle.
- If postage has not been paid on line with Click-N-Ship or other PC Postage, inform the customer that you can only accept pre-paid items. Process articles using the existing Click-N-Ship/PC Postage procedures.
- Employee scans the PS Form 5630 using the Mobile Data Collection Device (MDCD scanner). Note: MDCD scanners must be used to scan barcodes. POS ONE scanners are not yet programmed to accept this barcode.
- Employee verifies the package volume count on the shipping notice.
 - If the volume on the shipping notice matches the volume being collected from the customer, the employee should make **1:YES** selection by pressing the number 1 on the keypad of the MDCD scanner.
 - If the volume on the shipping notice does not match the volume being collected from the customer, the employee should make the **2:NO**. If the volume does not match, the mail should still be collected and dispatched as normal.

USPS DELIVERY CONFIRMATION



9475 7102 0079 3268 4247 54

PS Form 5630, November 2006, PSN 7530-08-000-4335



Package Pickup Notification
Confirmation Number: WTC87766312

Tuesday, July 23, 2013
LINDA STEIN
28 ALLENHURST CT
GAITHERSBURG, MD 20878-1990

Dear: LINDA STEIN

Thank you for shipping with the U.S. Postal Service. The status of your request is indicated below. For more time-saving features, visit our Web site at www.usps.com.
Postmaster

Request Summary

Total Packages: 4
Total Weight: 4.0
Package(s) Location: Knock on Door/Ring Bell
Special Instructions:

Reason Not Picked Up

- ALL ☒ Number of Packages Picked Up
☐ Number of Packages Not Picked Up (indicate number per reason below)
☐ All/Some Packages Not Found
☐ Carrier Notified, failed to comply with request (explanation required)
☐ Customer Improperly Placed an Order for Pickup (explanation required)
☐ International address requirements are not met
☐ Manager/Supervisor Failed to initiate the Pickup (explanation required)
☐ More than 1/2 mile from mailbox
☐ No Postage
☐ Package(s) Damaged
☐ Package not in mailbox as specified
☐ Road not passable
☐ Safety Concern
☐ Unsatisfactory Packaging
☐ Other (explanation required)

Explanation:



Shipment Confirmation Acceptance Notice

A. Mailer Action

Note To Mailer: The labels and volume associated to this form online, must match the labeled packages being presented to the USPS® employee with this form.

Shipment Date: 07/22/2013

Shipped From:
Zosimos Botanicals LLC
28 ALLENHURST CT
GAITHERSBURG MD 20878-1990

Type of Mail	Volume
Priority Mail Service®	2
Express Mail Service®*	0
International Mail*	0
Other	2
Total Volume	4

*Start time for products with service guarantees will begin when mail arrives at the local Post Office™ and items receive individual processing and acceptance scans.

B. USPS Action

- **USPS EMPLOYEE:** Please scan upon pickup or receipt of mail. Leave form with customer or in customer's mail receptacle.
- If postage has not been paid on line with Click-N-Ship or other PC Postage, inform the customer that you can only accept pre-paid items. Process articles using the existing Click-N-Ship/PC Postage procedures.
- Employee scans the PS Form 5630 using the Mobile Data Collection Device (MDCD scanner). Note: MDCD scanners must be used to scan barcodes. POS ONE scanners are not yet programmed to accept this barcode.
- Employee verifies the package volume count on the shipping notice.
 - If the volume on the shipping notice matches the volume being collected from the customer, the employee should make 1:YES selection by pressing the number 1 on the keypad of the MDCD scanner.
 - If the volume on the shipping notice does not match the volume being collected from the customer, the employee should make the 2:NO. If the volume does not match, the mail should still be collected and dispatched as normal.

USPS DELIVERY CONFIRMATION



9475 7102 0079 3266 5312 87

PS Form 5630, November 2006, PSN 7530-08-000-4335



Shipment Confirmation Acceptance Notice

A. Mailer Action

Note To Mailer: The labels and volume associated to this form online, must match the labeled packages being presented to the USPS® employee with this form.

Shipment Date: 07/19/2013

Shipped From:

Zosimos Botanicals LLC
28 ALLENHURST CT
GAITHERSBURG MD 20878-1990

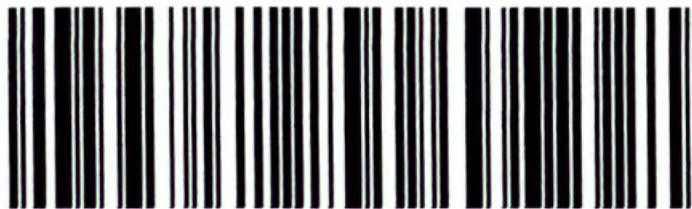
Type of Mail	Volume
Priority Mail Service®	5
Express Mail Service®*	0
International Mail*	1
Other	6
Total Volume	12

*Start time for products with service guarantees will begin when mail arrives at the local Post Office™ and items receive individual processing and acceptance scans.

B. USPS Action

- **USPS EMPLOYEE:** Please scan upon pickup or receipt of mail. Leave form with customer or in customer's mail receptacle.
- If postage has not been paid on line with Click-N-Ship or other PC Postage, inform the customer that you can only accept pre-paid items. Process articles using the existing Click-N-Ship/PC Postage procedures.
- Employee scans the PS Form 5630 using the Mobile Data Collection Device (MDCD scanner). Note: MDCD scanners must be used to scan barcodes. POS ONE scanners are not yet programmed to accept this barcode.
- Employee verifies the package volume count on the shipping notice.
 - If the volume on the shipping notice matches the volume being collected from the customer, the employee should make 1:YES selection by pressing the number 1 on the keypad of the MDCD scanner.
 - If the volume on the shipping notice does not match the volume being collected from the customer, the employee should make the 2:NO. If the volume does not match, the mail should still be collected and dispatched as normal.

USPS DELIVERY CONFIRMATION



9475 7102 0079 3265 9890 58

PS Form 5630, November 2006, PSN 7530-08-000-4335



Shipment Confirmation Acceptance Notice

A. Mailer Action

Note To Mailer: The labels and volume associated to this form online, must match the labeled packages being presented to the USPS® employee with this form.

Shipment Date: 07/17/2013

Shipped From:

Zosimos Botanicals LLC
28 ALLENHURST CT
GAITHERSBURG MD 20878-1990

Type of Mail	Volume
Priority Mail Service®	1
Express Mail Service®*	0
International Mail*	1
Other	8
Total Volume	10

*Start time for products with service guarantees will begin when mail arrives at the local Post Office™ and items receive individual processing and acceptance scans.

B. USPS Action

- **USPS EMPLOYEE:** Please scan upon pickup or receipt of mail. Leave form with customer or in customer's mail receptacle.
- If postage has not been paid on line with Click-N-Ship or other PC Postage, inform the customer that you can only accept pre-paid items. Process articles using the existing Click-N-Ship/PC Postage procedures.
- Employee scans the PS Form 5630 using the Mobile Data Collection Device (MDCD scanner). Note: MDCD scanners must be used to scan barcodes. POS ONE scanners are not yet programmed to accept this barcode.
- Employee verifies the package volume count on the shipping notice.
 - If the volume on the shipping notice matches the volume being collected from the customer, the employee should make **1:YES** selection by pressing the number 1 on the keypad of the MDCD scanner.
 - If the volume on the shipping notice does not match the volume being collected from the customer, the employee should make the **2:NO**. If the volume does not match, the mail should still be collected and dispatched as normal.

USPS DELIVERY CONFIRMATION



9475 7102 0079 3265 3857 13

PS Form 5630, November 2006, PSN 7530-08-000-4335



Shipment Confirmation Acceptance Notice

A. Mailer Action

Note To Mailer: The labels and volume associated to this form online, must match the labeled packages being presented to the USPS® employee with this form.

Shipment Date: 07/10/2013

Shipped From:
Zosimos Botanicals LLC
28 ALLENHURST CT
GAITHERSBURG MD 20878-1990

Type of Mail	Volume
Priority Mail Service®	0
Express Mail Service®*	0
International Mail*	1
Other	6
Total Volume	7

*Start time for products with service guarantees will begin when mail arrives at the local Post Office™ and items receive individual processing and acceptance scans.

B. USPS Action

- **USPS EMPLOYEE:** Please scan upon pickup or receipt of mail. Leave form with customer or in customer's mail receptacle.
- If postage has not been paid on line with Click-N-Ship or other PC Postage, inform the customer that you can only accept pre-paid items. Process articles using the existing Click-N-Ship/PC Postage procedures.
- Employee scans the PS Form 5630 using the Mobile Data Collection Device (MDCD scanner). Note: MDCC scanners must be used to scan barcodes. POS ONE scanners are not yet programmed to accept this barcode.
- Employee verifies the package volume count on the shipping notice.
 - If the volume on the shipping notice matches the volume being collected from the customer, the employee should make **1:YES** selection by pressing the number 1 on the keypad of the MDCC scanner.
 - If the volume on the shipping notice does not match the volume being collected from the customer, the employee should make the **2:NO**. If the volume does not match, the mail should still be collected and dispatched as normal.

USPS DELIVERY CONFIRMATION



9475 7102 0079 3263 4888 81

PS Form 5630, November 2006, PSN 7530-08-000-4335

MARYLAND SALES & USE TAX LICENSE

14282405

Sales and Use Tax Registration Number

01/07/2011

Issue Date

Peter Franchot

Peter Franchot
Comptroller

ZOSIMOS BOTANICALS LLC
28 ALLENHURST COURT
GAITHERSBURG, MD 20878-1990



COMPTROLLER
of MARYLAND
Serving the People

Revenue Administration Division
110 Carroll Street • Annapolis, MD 21411

This license must be displayed prominently. A separate license is required for each place of business.

001001001001

Board of Appeals
BOA-3280-2013
Exhibit #8

**Maryland Department of Assessments and Taxation****Taxpayer Services Division**

301 West Preston Street W Baltimore, MD 21201

[Main Menu](#) | [Security Interest Filings \(UCC\)](#) | [Business Entity Information \(Charter/Personal Property\)](#)
[New Search](#) | [Get Forms](#) | [Certificate of Status](#) | [SDAT Home](#)

Taxpayer Services Division

Entity Name: ZOSIMOS BOTANICALS
Dept ID #: T00216572

General Information AmendmentsNOTICE ABOUT IMAGE AVAILABILITY AND ACCURACY

Page 1 of 1

Description	Date Filed	Time	Film	Folio	Pages	View Document	Order Copies
<u>TRADE NAME REGISTRATION</u>	12/02/2004	11:12 AM	B00736	0723	2		



PLANNING AND CODE ADMINISTRATION

City of Gaithersburg · 31 South Summit Avenue · Gaithersburg, Maryland 20877 · Telephone: (301) 258-6330 · Fax: (301) 258-6336
plancode@gaithersburgmd.gov · www.gaithersburgmd.gov

HOME BASED BUSINESS LICENSE APPLICATION

All information must be complete to initiate processing of application

SUBJECT PROPERTY

Name of Business Zosimos Botanicals LLC Type of Business internet mineral makeup
Address 28 Allenhurst Court, Gaithersburg, MD 20878-1990

PROPERTY OWNER

Name Linda and Michael Stein
Telephone Numbers: Home 301-947-7624 Cell 301-233-0731 E-Mail Linda@zosimosbotanicals.com

PRIMARY CONTACT

Name Linda Stein
Telephone Numbers: Home 301-947-7624 Cell 301-233-0731 E-Mail Linda@zosimosbotanicals.com

TYPE OF BUSINESS IMPACT (check only one)

☐ None

- All Employees Live at Residence
- No More Than (5) Deliveries or Visits per Week
- No Discernible Adverse Impact upon Adjacent Properties or Neighborhood

☒ Minor Impact

- No More Than (1) Non-Resident Employee
- No More Than (7) Deliveries or (20) Visits per Week
- No Discernible Adverse Impact upon Adjacent Properties or Neighborhood

☐ Material Impact

- More Than (1) Non-Resident Employee
- More Than (7) Deliveries or (20) Visits per Week
- Discernible Adverse Impact upon Adjacent Properties or Neighborhood

Describe any Discernible Adverse Impact None

BUSINESS DETAILS

Number of Employees that Live On-Site 1
Number of Employees that Live Off-Site 2 (Plus intern)
Number of Customers per Week (estimate) 0
Number of Deliveries per Week (estimate) 3
Number of Off Street Parking Spaces Available to Customers 3
Type of Business Related Vehicles Parked on the Premises 0
Type (s) of Materials or Supplies Stored on the Premises organic oil, wax, mica, plastic bottles and glass jars
Will a Business Sign be on the Site? ☐ Yes ☒ No

**PETITION IN SUPPORT OF
HOME BASED BUSINESS LICENSE APPLICATION**

JULY 24, 2013

I live in an adjacent property in the neighborhood where Linda Stein's house is located at 28
Allenhurst Court. Linda's home-based business has no discernible adverse impact upon me.

NAME	ADDRESS
Judi Frum	31 Allenhurst Ct
Doris Miller	24 Allenhurst
Henry Vidangos	19 Allenhurst Ct
Minh Ding	17 21 ALLENHURST CT
Maggie Peng	22 ALLENHURST CT
Kathleen Sullivan	16 Allenhurst Ct.
Carol & Mayor	14 Allenhurst Ct.
Lewis Frankheimer	23 Allenhurst Ct
Karen Dowdy	22 Allenhurst Ct
Karen Lang	30 Allenhurst Ct

August 1, 2013

City of Gaithersburg

Re: License Application from Zosimos Botanicals, LLC

As residents of Allenhurst Court, we wish to express our support for the business license application from Zosimos Botanicals, LLC, to operate a home-based business in our neighborhood.

1. We have resided at 25 Allenhurst Court since 1984, located directly across from the home where Zosimos would be licensed to operate.
2. We are both retired, and frequently home all day, so we have a good perspective of the impact of business operations.
3. In our view, the operations would not have an adverse impact on the neighborhood.
4. Zosimos is a family-friendly, eco-friendly, woman-owned business, which employs minorities.

In view of the above, we have no objection to approval of the license application.

Sincerely,

(by electronic mail)

John and Marcella Hickey
25 Allenhurst Court
Gaithersburg, MD 20878
301-977-3541

Lisa Brown
26 Allenhurst Court
Gaithersburg, MD 20878

August 1, 2013

Dear City of Gaithersburg,

I am Linda Stein's next door neighbor. I am writing to inform you that I don't object to Linda's application for a home based business license.

Thank you,


Lisa Brown

Caroline Seiden

From: Linda Stein <linda@zosimosbotanicals.com>
Sent: Monday, August 26, 2013 10:42 PM
To: Caroline Seiden
Subject: Fwd: Business next door

Caroline, If possible, can this be added to my Special Exception application? Thank you.

Linda

From: Karen Long <kjvlong@gmail.com>
Sent: Wed Aug 14 22:33:09 EDT 2013
To: Linda@zosimosbotanicals.com
Subject: Business next door

Linda--Sorry for the delay.

To Whom It May Concern:

I do not have any objections to their being a business next door to me.

Karen Long
30 Allenhurst Court
Gaithersburg MD

CEO/Formulator
Zosimos Botanicals LLC
<http://www.zosimosbotanicals.com>
Sent from my Android phone with K-9 Mail.

Josh and Julia Rosenbaum
419 Bostwick Lane
Gaithersburg, MD
20878

July 28, 2013

To Whom It May Concern:

We are writing to indicate that we do not object to Linda Stein being granted a home-based business license in our neighborhood at her home on 28 Allenhurst Court, Gaithersburg, MD 20878. We are located behind the Stein's house and we do not believe that her business is a detriment to the neighborhood.

If you have any questions, we can be reached at 301-990-7032. Thank you.

Josh and Julia Rosenbaum

Coalition for Consumer Information on Cosmetics

Certificate of Appreciation

The Coalition for Consumer Information on Cosmetics (CCIC)
is pleased to present this Certificate of Appreciation to

Zosimos Botanicals

for adopting the Corporate Standard of Compassion for Animals.



Sue A. Leary, CCIC Chair



Date

- ❖ American Anti-Vivisection Society
- ❖ Animal Alliance of Canada
- ❖ Beauty Without Cruelty, U.S.A.
- ❖ Doris Day Animal League
- ❖ The Humane Society of Canada
- ❖ The Humane Society of the United States

- ❖ MSPCA Center for Laboratory Animal Welfare
- ❖ New England Anti-Vivisection Society

International Partner

- ❖ European Coalition to End Animal Experiments



Gaithersburg Environmental Award

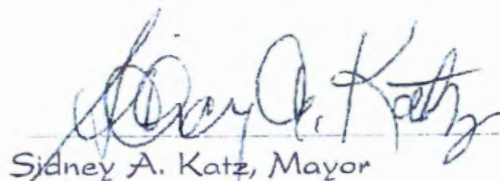
from the
Mayor and City Council of Gaithersburg
presented to

Zosimos Botanicals

in recognition of outstanding achievement
in improving our environment.

Proclaimed this 2nd day of April, 2013




Sidney A. Katz, Mayor



Gaithersburg Environmental Award

from the
Mayor and City Council of Gaithersburg
presented to

Zosimos Botanicals LLC

in recognition of outstanding efforts
to improve our environment.

Proclaimed this 19th day of April, 2010





Sidney A. Katz, Mayor



Gaithersburg Environmental Award

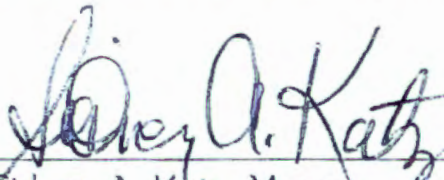
from the
Mayor and City Council of Gaithersburg
presented to

Zosimos Botanicals LLC

in recognition of outstanding efforts
to improve our environment.

Proclaimed this 27th day of April, 2009




Sidney A. Katz, Mayor



Gaithersburg Environmental Award

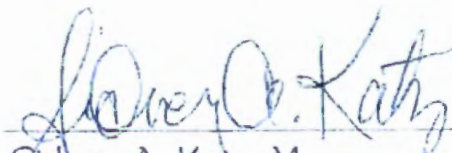
from the
Mayor and City Council of Gaithersburg
presented to

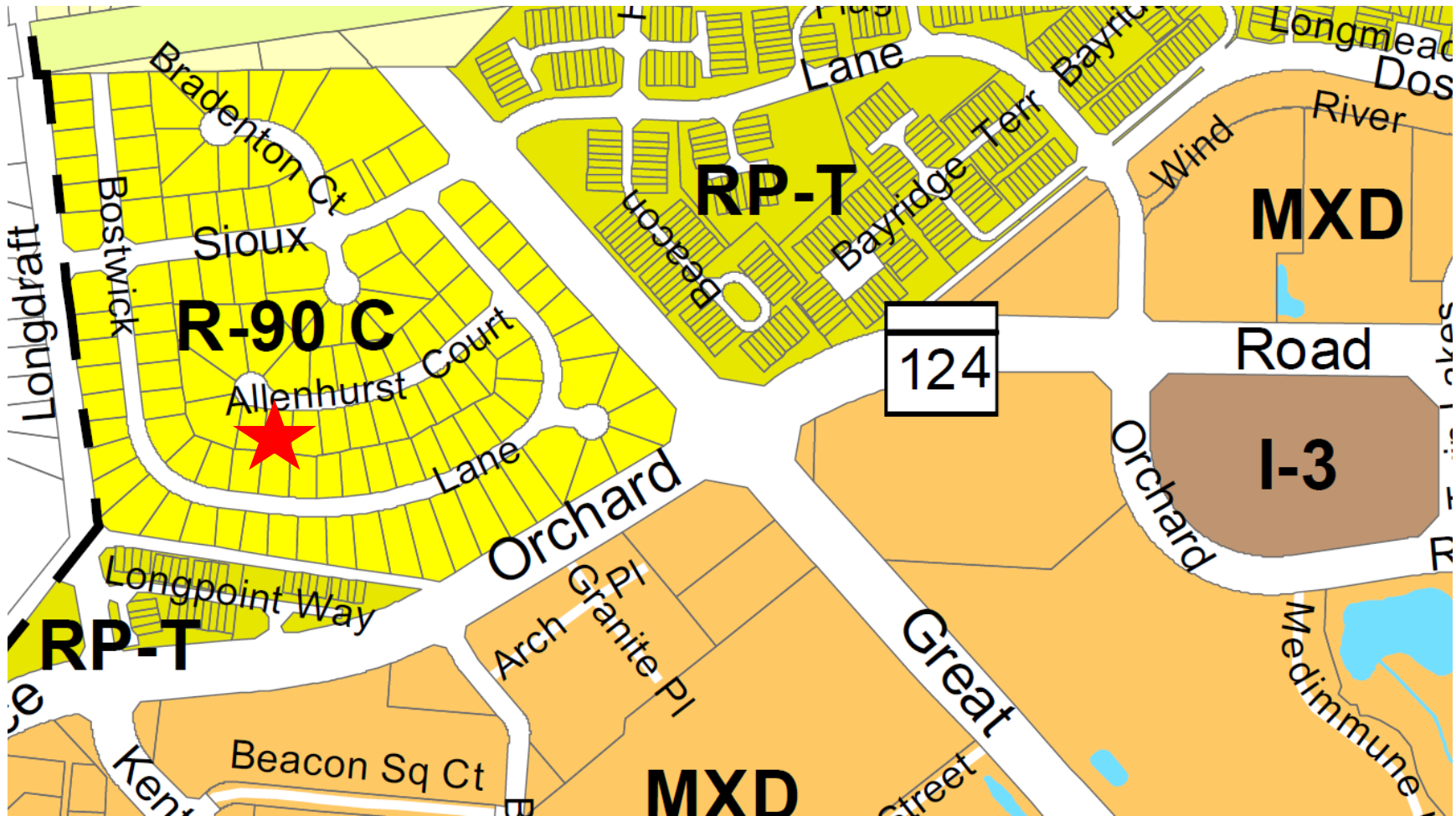
Zosimos Botanicals

in recognition of outstanding efforts
to improve our environment.

Proclaimed this 16th day of April, 2012




Sidney A. Katz, Mayor



City of Gaithersburg Zoning Map



28 Allenhurst Court

28 Allenhurst Court



MD State Plane
HPGN NAD 83/91

Aerial orthophoto is courtesy of the USGS National Map program. <http://nationalmap.gov/>
Property boundaries and planimetric base map ©2011 M-NCPPC and City of Gaithersburg.
All rights reserved. Aerial photo acquired March 2008.

The City of Gaithersburg makes no warranty, express or implied, for the completeness and accuracy of the information depicted on this map. This map may not be reproduced, in whole or in part, without the express written permission of the City of Gaithersburg and other referenced parties.



City of Gaithersburg
Planning and Code Admin
31 S Summit Ave
Gaithersburg, MD 20877
(301) 258-6330
www.gaithersburgmd.gov



owner_name_line_1	owner_name_line_2	owner_address_line_1	owner_address_city	owner_address_state	owner_address_zip_code
HICKEY JOHN W N & M A		25 ALLENHURST CT	GAITHERSBURG	MD	20878
SEIDEL SANDI M		27 ALLENHURST CT	GAITHERSBURG	MD	20878
FERNHEIMER LOUIS & S H		23 ALLENHURST CT	GAITHERSBURG	MD	20878
LONG RICHARD M & K J		30 ALLENHURST CT	GAITHERSBURG	MD	20878
ROSENBAUM JOSHUA M & JULIA A		419 BOSTWICK LN	GAITHERSBURG	MD	20878
BROWN AARON J & L J		26 ALLENHURST CT	GAITHERSBURG	MD	20878
PHELAN PAUL JOHN &	SHANNON MCKENZIE PHELAN	421 BOSTWICK LN	GAITHERSBURG	MD	20878
STEIN MICHAEL A & L B		28 ALLENHURST CT	GAITHERSBURG	MD	20878
SHEA DANIEL J & S L		417 BOSTWICK LANE	GAITHERSBURG	MD	20878
Alan Rosen	President	17017 Sioux Lane	Gaithersburg	MD	20878
Andrea Liacouras	President	105 Twelve Oaks Court	Gaithersburg	MD	20877
April Day	Community Association Services, Inc.	18401 Woodfield Road, Suite H	Gaithersburg	MD	20879
Brian Weiblinger	President	147 Apple Blossom Way	Gaithersburg	MD	20878
Bruce Blumberg	Abaris Realty, Inc.	12009 Nebel Street	Rockville	MD	20852
Carla Johnson	Bennington	29 Goodport Lane	Gaithersburg	Maryland	20878
Carrie Mathis	Quantum	5101 River Road, Suite 101	Rockville	Maryland	20816
Cheryl Berger	Association Bookkeeping Service, Inc.	849-F Quince Orchard Boulevard	Gaithersburg	MD	20878
Chris Froehlich	Community Mngmnt. Corp.	11300 Rockville Pike #907	Rockville	MD	20852
Claude Lumpkins	Vista Management	1131 University Blvd West Suite 101	Silver Spring	MD	20902
Craig Chung	The Management Group	20440 Century Boulevard, Suite 100	Germantown	Maryland	20874
Dale Roan	Main Street Property Management, Inc.	9 Park Avenue	Gaithersburg	MD	20877
David Sapoznick	Summit Management Services, Inc. AAMC	3833 Farragut Avenue	Kensington	MD	20895
David Studley	President	716 Beacon Hill Terrace	Gaithersburg	MD	20878
Elaine Ziemke	The Management Group	20440 Century Boulevard, Suite 100	Germantown	Maryland	20874
Eric Cooper	Property Management People	955-A Russell Avenue	Gaithersburg	Maryland	20879
Frances Winter	President	2 Glazebrook Court	Gaithersburg	MD	20878
Glenn Loveland	Abaris Realty, Inc.	12009 Nebel Street	Rockville	MD	20852
Guisela Deering	The Simmons Management Group, Inc.	8911 60th Avenue, 2nd Floor	College Park	MD	20740
Hank Jacob	Allied Realty	7605 Arlington Road	Bethesda	MD	20814
Ibrahim Dukuly	Lighthouse Property Management, LTD	P.O. Box 5379	Takoma Park	MD	20913
Jackie Shaw	Vice President	5 Antioch Road	Gaithersburg	MD	20878
Jeff Kivitz	Main Street Property Management, Inc.	9 Park Avenue	Gaithersburg	MD	20877
Jesse James	Allied Realty	7605 Arlington Road	Bethesda	MD	20814
Jessica Cummings	IKO Real Estate, Inc.	3416 Olandwood Court, Suite 210	Olney	MD	20832
Jon May	President	8940 Edgewood Drive	Gaithersburg	Maryland	20877
Katrina Barrett	ComSource Management, Inc.	3414 Morningwood Drive	Olney	MD	20832
Kevin Kapp	Vista Management	1131 University Blvd West Suite 101	Silver Spring	MD	20902
Kim Lee	Villa Ridge Condominium Association	414 Girard Street	Gaithersburg	MD	20877
Lisa Franklin	PROCAM	14904 New Hampshire Avenue	Silver Spring	Maryland	20905
Lori Cohen	Armstrong Management Services	3949 Pender Drive #205	Fairfax	Virginia	22030
Matt Snyder	ComSource Management, Inc.	3414 Morningwood Drive	Olney	MD	20832
Mayea Henderson	Community Management Corporation	11300 Rockville Pike #907	Rockville	MD	20852
Michael Eckloff	ComSource Management, Inc.	3414 Morningwood Drive	Olney	Maryland	20832
Michael LaPrade	ComSource Management, Inc.	3414 Morningwood Drive	Olney	MD	20832
Michele Kennedy	ComSource Management, Inc.	3414 Morningwood Drive	Olney	MD	20832
Mike Potter	M.T.M Management Associates	26223 Ridge Road	Damascus	MD	20872

Nancy Goglio	President	905 Wild Forest Drive	Gaithersburg	Maryland	20879
Patty Floyd	Paul Associates, Inc.	6935 Wisconsin Avenue Suite 400	Chevy Chase	MD	20815
Peggy Toland	Community Association, Inc.	15742 Crabbs Branch Way	Derwood	MD	20855
Peyton Harris	Capital Management	12011 Lee Jackson Highway #350	Fairfax	VA	22033
Ralph Caudle	IKO Real Estate, Inc.	3416 Olandwood Court, Suite 210	Olney	MD	20832
Randy Fox	Kentlands Citizen Assembly, Inc.	485 Tschiffely Square Road	Gaithersburg	Maryland	20878
Richard Skobel	Main Street Property Management, Inc.	9 Park Avenue	Gaithersburg	MD	20877
Robert Fogel	Abaris Realty, Inc.	12009 Nebel Street	Rockville	MD	20852
Ruchita Patel	The Management Group	20440 Century Boulevard, Suite 100	Germantown	Maryland	20874
Sandra Ewing	Vanguard Management Associates	PO Box 39	Germantown	MD	20875
Shireen Ambush	Abaris Realty, Inc.	12009 Nebel Street	Rockville	MD	20852
Steve Leskowitz	The Management Group	20440 Century Boulevard, Suite 100	Germantown	Maryland	20874
Tom Armstrong	President	108 Longdraft Road	Gaithersburg	Maryland	20878



Gaithersburg

City of Gaithersburg
31 S. Summit Avenue
Gaithersburg MD 20877

Board of Appeals
BOA-3280-2013
Exhibit #21

NOTICE OF BOARD OF APPEALS MEETING
***THURSDAY, SEPTEMBER 19, 2013 at 7:30 PM**
City Hall Council Chambers
31 S. Summit Avenue, Gaithersburg MD 20877

You are receiving this postcard to inform you of a proposal for a special exception within 200 feet of your property or you have expressed an interest in the subject plan(s).

APPLICATION TYPE:	SPECIAL EXCEPTION REVIEW
FILE NUMBER:	BOA-3280-2013
LOCATION:	28 Allenhurst Court
PROPOSAL	Home Based Business - Material Impact

In addition, the Planning Commission will be reviewing the above-referenced application on **Wednesday, September 11, 2013** at 7:30 p.m. in the location noted above.

For additional information, you may review the project file(s) at the Planning and Code Administration offices located at City Hall, 31 S. Summit Avenue, Gaithersburg Maryland between the hours of 8:00 am and 5:00 pm Monday through Friday. You may also refer to the City web site at www.gaithersburgmd.gov or contact us via telephone at 301-258-6330.

*Subject to Change

From: linda@zosimosbotanicals.com
To: [Caroline Seiden](#)
Cc: [Henry Marraffa - External](#)
Subject: Re: Sign has been Posted
Date: Friday, August 30, 2013 9:22:12 PM

Caroline, The sign has been posted. Please see attached photo.

Have a beautiful holiday weekend,


Linda

On Fri, August 30, 2013 2:32 pm, Caroline Seiden wrote:

> Hi Linda,
>
> Just wanted to let you know that the sign for your front yard has been
> prepared. You can pick it up at City Hall anytime that is convenient for
> you so long as it is posted by 5:00 pm on Wednesday, September 4. Once
> posted, please send me a confirmation email with photograph indicating
> that it has been posted. Thanks!
>
> Caroline Seiden
> Planner
> City of Gaithersburg
> Planning and Code Administration
> 31 S. Summit Avenue, Gaithersburg, MD 20877
>
> 301-258-6330 (PHONE)
> 301-258-6336 (FAX)
> cseiden@gaithersburgmd.gov <<mailto:cseiden@gaithersburgmd.gov>>
> www.gaithersburgmd.gov <<http://www.gaithersburgmd.gov/>>
>
>

Linda Stein, Esq.
Formulator/Activist
Zosimos Botanicals LLC
<http://www.zosimosbotanicals.com>
<http://www.facebook.com/zosimosbotanicals>




BOARD OF APPEALS
BOA Home-Based
3280-2013 Business
FILE NO. REQUEST
SPECIAL EXCEPTION
APPLICATION TYPE
Thursday Sept 19, 2013
DAY * DATE
7:30 P.M.
GAITHERSBURG CITY HALL
31 SOUTH GAITHER AVENUE
*SUBJECT TO CHANGE
CALL 301-258-6330
www.gaithersburgmd.gov

Notice - Board of Appeals Public Hearing: 28 Allenhurst Court, 9/19/2013

Posted 9/3/2013

CITY OF GAITHERSBURG
31 South Summit Avenue
Gaithersburg, Maryland 20877
Telephone: **301-258-6330**

BOARD OF APPEALS NOTICE OF PUBLIC HEARING

In accordance with Section 24-187 through 190 of the City of Gaithersburg Zoning Ordinance, the City of Gaithersburg Board of Appeals will conduct a Public Hearing at the time and place noted below.

Application Type: **SPECIAL EXCEPTION**
File Number: **BOA-3280-2013**
Location: **28 ALLENHURST COURT**
Petitioner: **LINDA STEIN**
Development: **HOME BASED BUSINESS – MATERIAL IMPACT**
Day/ Date/Time: **THURSDAY, SEPTEMBER 19, 2013**
Place: **COUNCIL CHAMBERS, GAITHERSBURG CITY HALL
31 SOUTH SUMMIT AVENUE**

In accordance with Section 24-187 of the City of Gaithersburg Zoning Ordinance, the Board of Appeals will conduct a public hearing on the above-referenced application in the Council Chambers at City Hall, 31 South Summit Avenue, on Thursday, September 19, 2013 at 7:30 p.m. or as soon thereafter as this matter can be heard. In addition, the Planning Commission will be reviewing the above-referenced application on Wednesday, September 11, 2013 at 7:30 p.m. in the Council Chambers at City Hall, 31 South Summit Avenue.

The application requests a Special Exception to permit a home based business (material impact) at 28 Allenhurst Court, Gaithersburg, Maryland. The property is located in the R-90 Cluster Zone. The special exception is allowed by Section 24-216(c) of the City of Gaithersburg Zoning Ordinance (Chapter 24 of the City Code), subject to the review of the Board of Appeals.

Further information may be obtained from the Department of Planning and Code Administration at City Hall, 31 South Summit Avenue, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday.

CITY OF GAITHERSBURG
Caroline Seiden, Planner
Planning and Code Administration

Board of Appeals
BOA-3280-2013
Exhibit #23

LOCATION MAP



Receive City agendas, minutes and news via e-mail. Sign up for the myGaithersburg e-mail-based news service at www.gaithersburgmd.gov/myGaithersburg.

Comments or questions about this page?



Feedback

Copyright © 2013, City of Gaithersburg

A CHARACTER COUNTS! City

[Privacy Statement](#)

[TOP](#)

From: linda@zosimosbotanicals.com
To: [Caroline Seiden](#)
Subject: RE: Special Exception Conditions
Date: Wednesday, September 04, 2013 12:37:10 PM
Attachments: [EmployeeSchedule.doc](#)

Hi Caroline, Attached is a revised Employee Schedule which accounts for our potential extended hours. I also made notes about the after school employees and replacement that are not yet on the payroll. If necessary, please explain that this is the rationale for requesting the maximum of 4 non-resident employees.

If possible, I would like to respectfully request that street parking in front of my house be available for 1 vehicle after 6 pm. The high school kids walk from Quince Orchard or take the bus. One employee parks in my driveway. The PRN employee (Andrea) parks in the street. It is very inconvenient to have her move her car every instance she may be here after 4. I would have to switch with her and park in the street, or she would block my van in the garage. Both instances are very inconvenient. Moving the cars around would cause more activity in the neighborhood than simply leaving it there. I also employ a telecommuter, Sara, who comes by about once or twice a month, but when she does she usually parks in the street. These are not commercial vehicles. The area requested is not to the left side of my driveway. Facing my house, it is the area on the right side of the driveway.

Thank you in advance for your consideration.

Have a beautiful day,

Linda

FALL SCHEDULE - Sept. through Jan.

	Erika**	Linda S.*	Andrea
WEEK 1			
Monday	9-6	9:30-2:30	PRN
Tuesday	9-6	9:30-12:30, 1:15-2:30	PRN
Wednesday	9-6	9:30-2:30	PRN
Thursday	9-6	9:30-2:30	PRN
Friday	9-6	9:30-2:30	PRN
WEEK 2			
Monday	9-6	9:30-2:30	PRN
Tuesday	9-6	9:30-12:30, 1:15-2:30	PRN
Wednesday	9-6	9:30-2:30	PRN
Thursday	9-6	9:30-2:30	PRN
Friday	9-6	9:30-2:30	PRN

* Holiday hours November/December will be extended 2:30pm -12am PRN

** Erika will be relocating to Washington State during this time period. She will be training the replacement Employee. Erika and the new Employee will be in the studio together.

*** Zosimos Botanicals usually employs one or two High School students during the academic year. If there are 2, they share the job and are not in the studio on the same days.

© 2013 Zosimos Botanicals LLC

MEMORANDUM TO: Caroline Seiden, Board of Appeals Liaison
FROM: Allen Meyer, Code Administration Officer
DATE: September 4, 2013
SUBJECT: 28 Allenhurst Court

On July 18, 2013 I received a complaint from a resident regarding an unlicensed home based business at the above referenced location. After finding a webpage for Zosimos Botanicals at 28 Allenhurst Court, I sent an Official Notice requesting that the homeowner apply for a home based business license.

On July 24, 2013 I was contacted by the owner (Linda Stein) and conducted an inspection of the home based business shortly thereafter. The business complied with all of the regulations of a *minor impact home based business* (square footage of the business, visits per weeks, etc.) except for the number of non-resident employees. I informed Mrs. Stein that she could either reduce the number of non-resident employees to no more than one, or she could apply for a special exception from the Board of Appeals.

acm

**BOARD OF APPEALS
RESOLUTION APPROVING**

A PETITION BY LINDA STEIN ON BEHALF OF ZOSIMOS BOTANICALS, LLC,
REQUESTING A SPECIAL EXCEPTION FOR A HOME BASED BUSINESS,
MATERIAL IMPACT, AT 28 ALLENHURST COURT, GAITHERSBURG, MARYLAND.
THE PROPERTY IS LOCATED IN THE R-90 CLUSTER ZONE AS ALLOWED BY
SECTION 24-216 (c) OF THE CITY OF GAITHERSBURG ZONING ORDINANCE
(CHAPTER 24 OF THE CITY CODE).

BOA-3280-2013

OPINION

This matter has come before the Board of Appeals as a special exception petition by Linda Stein for Zosimos Botanicals, LLC, to permit a home based business, material impact, at 28 Allenhurst Court, Gaithersburg, Maryland. The special exception is allowed by Section 24-216(c) of the City of Gaithersburg Zoning Ordinance (Chapter 24 of the City Code) The Board's authority in these matters is provided pursuant to Subtitle 3, Title 4, *Land Use Article*, of the Maryland Annotated Code and § 24-187(b) of the Zoning Ordinance (Chapter 24 of the City of Gaithersburg Code) which authorizes the Board to hear and decide only those special exceptions as the Board of Appeals is specifically authorized to pass on by the terms of this Chapter.

Operative Facts

Linda Stein, on behalf of Zosimos Botanicals, LLC, originally filed the application and exhibits on August 9, 2013. The application requests a special exception for a home based business, material impact, at 28 Allenhurst Court, Gaithersburg, Maryland in the R-90 Cluster Zone.

In accordance with Section 24-188(d), the Planning Commission reviewed the special exception request at their September 11, 2013 regularly scheduled meeting. Following testimony from Ms. Stein and Zosimos Botanicals employee, Andrea Levy, the Planning Commission analyzed the application and made a recommendation to the Board of Appeals that the special exception be approved with four conditions:

1. This special exception is granted for Zosimos Botanicals, LLC, only and shall not be transferable to any other business located at 28 Allenhurst Court.
2. Operating hours for non-resident employees are restricted to weekdays from 9:00 am to 6:00 pm.
3. A maximum of four (4) non-resident employees, volunteers, or interns may conduct business at 28 Allenhurst Court per day.
4. No more than ten (10) deliveries are permitted per week in addition to regular mail delivery.

The Planning Commission did not reach consensus on the applicant's request for a fifth condition to permit a non-resident employee to park a vehicle on the street after 4:00 pm and agreed that the Board of Appeals should address this issue at their hearing.

The Board of Appeals held a public hearing on Thursday, September 19, 2013, at 7:30 p.m. at City Hall. Notice of the public hearing was posted on the City's web site and sent to the applicants and surrounding property owners on September 4, 2013. The property was properly posted as well.

The Board reviewed 28 exhibits, including the Applicant's statement, a neighborhood petition in support of the application, letters in support of the application, and a memorandum from City of Gaithersburg Code Administration Officer Allen Meyer. Planner Seiden noted that the Planning Commission recommends approval of the petition with four conditions as stated above. Testimony was given by Ms. Stein concerning the operation of the home based business and its impact on the community. Additional testimony in support of the application was provided by City of Gaithersburg Council Member Henry Marraffa and Julien Labiche of Liberty's Promise. There was no testimony in opposition to the subject request.

Following the testimony and arguments, the Board closed the record and made a motion to approve the special exception.

Relevant Statutory Provisions

The following statutory provisions from the City Zoning Ordinance (Chapter 24 of the City of Gaithersburg Code) are among the provisions, which define the nature and extent, a special exception that may be granted by this Board and the criteria upon which they may be approved.

*

*

*

ARTICLE VII. Board of Appeals.

Sec. 24-187. Powers and duties.

The Board of Appeals shall have the following functions, powers, and duties:

- (b) **Special Exceptions.** To hear and decide only those special exceptions as the board of appeals is specifically authorized to pass on by the terms of this chapter.

The Board of Appeals is empowered to prescribe appropriate conditions and limitations upon the approval of special exceptions. Special exceptions approved by the Board shall be implemented in accordance with the terms and/or conditions set forth in the Board's decision and shall include the requirement that the petitioner shall be bound by all of his testimony and exhibits of record, the testimony of his witnesses and representations of his attorneys, to the extent that such evidence and representations are identified in the board's opinion approving the special exception. Violation of such conditions and limitations shall be deemed a violation of this chapter and, further, shall constitute grounds for revocation of such special exception.

Sec. 24-189. Findings required.

- (b) *Special Exceptions.* A special exception may be granted when the Board of Appeals finds from the evidence of record that the proposed use:

- (1) Is a permissible special exception within the zone and that the application complies with all procedural requirements set forth in this article;
- (2) Complies with all standards and requirements specifically set forth for such use as may be contained in this chapter and the development standards for the zone within which the intended use will be located;
- (3) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood; and will cause no objectionable noise, vibrations, fumes, odors, dust, toxicity, glare or physical activity;

considering population density, design, scale and bulk of any proposed new structure or conversion of existing structures; as well as the intensity and character of activity, traffic and parking conditions and number of similar uses;

- (5) Will be consistent with the master plan or other planning guides or capital programs for the physical development of the district;
- (6) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area;
- (7) Will be served by adequate public services and facilities, including police and fire protection, water and sanitary sewer, storm drainage, public roads and other public improvements; and
- (8) When located in a residential zone where buildings or structures are to be constructed, reconstructed or altered shall, whenever practicable, have the exterior appearance of residential buildings and shall have suitable landscaping, screening or fencing.

*

*

*

Sec. 24-191. Special exception implementation, modification, and abandonment.

- (a) The Board of Appeals shall prescribe a time limit in which the special exception is required to be completed. The Board of Appeals shall conduct a public hearing upon the failure to complete the special exception within the prescribed time and following the public hearing may terminate the special exception. The Board may, upon written request and for good cause shown, extend the time for completion of the special exception.
- (b) The Board of Appeals is authorized to amend or modify the terms or conditions of a special exception upon the request of the special exception holder or upon recommendation of any City department of the Planning Commission, or pursuant to a show cause hearing provided in section 24-192 of this Code. No public hearing shall be required unless the proposed modification will substantially change the nature, character or intensity of the use or materially impact the neighborhood in which such use is located. If the Board determines that a hearing is required, the notice and hearing provisions contained in section 24-188 of this Code shall apply.

*

*

*

Sec. 24-214. Purpose.

The purpose of this article is to allow home based businesses in enumerated zones as a permitted use or special exception use, dependent upon the intensity and impact of such businesses, to ensure compatibility with adjoining uses and the neighborhood in which they are located. It is intended that these uses be confined to the interior of any dwelling or dwelling unit; be conducted by resident(s) of the dwelling or dwelling unit; be incidental and subordinate to the primary residential use of the premises; be conducted without changing the characteristics of the neighborhood, or the residential appearance or condition of the structure in which they are located; and, be of limited scope and intensity in terms of interior area occupied by the business, the volume and frequency of visitors, traffic generated and parking demands. Home based businesses are not intended to be conducted in such a manner or scope, either by the number of workers, volume of business or visitors, interior building modifications, installation of equipment and fixtures, amount of stock in trade or parking demands, as to become a commercial use or enterprise normally found in or better accommodated in a commercial zoning district.

This article is not intended to prevent a common ownership community's ability to enforce the community's covenants, by-laws and rules. This article recognizes a dual regulatory process with respect to a home based business and the owner or operator of such business is separately subject to the standards, requirements and restrictions of this article and the covenants, by-laws and rules of the applicable common ownership community.

Sec. 24-215. Standards and requirements applicable to home based businesses.

No home based business shall be permitted to operate unless such operation complies with the following requirements:

- (a) The home based business is clearly subordinate to the primary residential use of the dwelling or dwelling unit or property within which it is located.
- (b) The home based business does not change the residential character or appearance of the dwelling, dwelling unit, property or neighborhood within which it is located. No alterations to the exterior of the premises, other than allowed by this article or required by city ordinance or regulation, will be permitted.

- (c) The business use conducted on site, with the exception of allowed parking and signage, shall be conducted entirely within the confines of the interior walls of the dwelling, dwelling unit or accessory structure. Provided, however, components of the business may be operated off-site, but not in any other dwelling or dwelling unit controlled by the owner or operator of the home based business.
- (d) The person conducting the business must use the home as his/her primary residence.
- (e) More than one home based business may exist within the same dwelling, dwelling unit or accessory structure so long as the cumulative scope and impact of all such businesses does not exceed the standards and limits for a single "minor" impact business, as specified in section 24-216 of this Code.
- (f) The home based business shall not occupy more than one-third (1/3) of the gross floor area of the dwelling or dwelling unit. The term "gross floor area" shall be as defined in section 24-1 of this Code, except that the term "gross floor area" shall include garages, cellars, sheds and accessory structures located on the same lot or parcel as the dwelling or dwelling unit.
- (g) Parking for business purposes shall be allowed as follows:
 - (i) Between the hours of 8:00 a.m. and 4:00 p.m. unrestricted.
 - (ii) Between the hours of 4:00 p.m. and 8:00 a.m. parking for business purposes must be off-street.
 - (iii) In all cases, parking for businesses located within areas controlled by communal or community associations must be consistent with the governing declaration of covenants, documents or regulations of the community association.
 - (iv) Where applicable, the off-street parking requirements of Article XI of this Chapter 24 shall apply.

Where a special exception is required for any home based business, the city board of appeals may promulgate conditions and establish such parking requirements different from this subsection (h) as may be necessary to accommodate the business and prevent inharmonious impacts upon adjacent properties and roadways.

- (h) The home based business may sell and store product samples and/or inventory, so long as:
 - (i) The items are incidental to the home based business.
 - (ii) Where sold and/or stored on site, they are located completely within the confines of the dwelling, dwelling unit or access structure. No product samples or inventory may be displayed, stored or sold in any open yard area.
 - (iii) The area devoted to the display and storage of samples and/or inventory shall be included in the allowable gross floor area calculation. No portion of the dwelling or dwelling unit devoted to residential purposes may be used to store samples or inventory.
 - (iv) The business may not store, maintain or use hazardous, toxic or combustible materials which require a fire department or other governmental agency permit or approval for use in the business.
- (i) The home based business may not use any equipment, facilities or process, or conduct any activity which creates noise, odor, electrical interference, vibration, fumes or glare detectable at levels beyond those normally incident to the operation of household appliances.
- (j) Deliveries to a home based business must be from common, commercial delivery services or by local merchants that ordinarily deliver to residential areas. Deliveries are not allowed by a dedicated truck or interstate common carrier which is normally used to deliver inventory to commercial businesses.

- (k) A home based business shall not commence operation until a license has been issued by the city.
- (l) The home based business must be operated in compliance with the definition and purpose of such use.
- (m) With the exception of vehicles operated by visitors or non-resident employees of the home based business, only one business-related vehicle may be parked at the premises at any one time.
- (n) The business may display one non-illuminated sign or symbol at the premises, affixed to the building only. The sign shall not exceed six (6) inches x twelve (12) inches total area and cannot be erected to protrude more than two (2) inches from the building. A separate permit for such sign is required, pursuant to section 24-213 of this Code. Any home based business sign lawfully in existence on the effective date of the ordinance enacting this section which does not conform to this article shall be permitted to remain until such time as the sign is structurally altered.

Sec. 24-216. Classifications of home based businesses.

Home based businesses shall fall within one of the three (3) following categories, and shall be subject to the requirements set forth below and other applicable code requirements:

- (a) *No impact home based business.*
 - (1) Operating limitations:
 - (i) No non-resident employees are allowed.
 - (ii) A maximum combination of not more than five (5) deliveries or visits per week.
 - (iii) There is no discernible adverse impact upon adjacent properties or the neighborhood.
 - (2) The operator of a no impact business shall register with the city manager or his designee upon forms provided and

provide any additional information or documentation as may be reasonably requested.

(b) *Minor impact home based business.*

(1) Operating limitations:

- (i) Not more than one non-resident employee is permitted.
- (ii) A maximum of seven (7) deliveries shall be allowed per week.
- (iii) Not more than twenty (20) visits shall be allowed per week. A "visit" is defined as a stop at the business premises by one automobile transporting one or more clients, customers or business associates. A visit does not include the operator of a business, member of his/her family, or the business employee.
- (iv) There is no discernible adverse impact upon adjacent properties or the neighborhood.

(2) The operator of a minor impact business shall register with the city manager or his designee upon forms provided and provide any additional information or documentation as may be reasonably requested. The operator shall pay a fee as shall be established by resolution of the city council.

(c) *Material impact home based business.* Any home based business not qualifying under the limitations applicable to either a no impact or minor impact home based business shall be a special exception, and shall require approval by the city board of appeals under the provisions of Article VII of Chapter 24 of this Code. The city board of appeals may establish conditions upon its approval in addition to those requirements established in section 24-215 of this Code to ensure that the home based business does not have an adverse impact on the surrounding properties or the neighborhood.

Sec. 24-217. Renewal; inspection; revocation.

(a) Registration approved for the conduct of a no impact or minor impact home based business shall be valid for a period of three (3)

years from the date of approval. Registration shall be renewed triennially, at which time the city manager shall update any information relative to changes in circumstances and use of the home based business and evaluate the registrant's current compliance.

- (b) The board of appeals may require periodic reviews of material impact home based business special exceptions to evaluate compliance by the special exception holder with the terms and conditions of the board's approval, and the necessity to modify or impose additional conditions to ensure compliance and compatibility with adjacent properties and the neighborhood.
- (c) The city manager or his designee shall have the right to inspect the premises of any applicant for a home based business registration or special exception, and once approved, to inspect the premises for conformance with the provisions of this Article X or any other applicable governmental code. The continued refusal or the unavailability of the premises for inspection or the violation of any provision of the zoning ordinance or condition of approval shall be grounds for revocation of any approved registration or a request to the board of appeals to revoke any home based business special exception. The city manager or the city board of appeals, where applicable, may suspend or revoke any home based business registration that:
 - (1) No longer conforms to the provisions of this article or conditions under which the registration was approved or the special exception granted; or
 - (2) Was found to be issued upon false or mistaken information supplied by the applicant; or
 - (3) Is determined to be in violation of any governmental code or regulation relating to the operation of the business or premises. A person aggrieved by a decision of the city manager may, within thirty (30) days after a decision or action is rendered, appeal the decision to the city board of appeals. Appeals shall be governed by the provisions of Article VII, Chapter 24 of this Code.

- (d) The board of appeals may revoke the special exception of any material impact home based business pursuant to the provisions of Article VII of this Chapter 24.

Findings and Conclusions

Based on the petitioner's arguments, binding testimony, and evidence of record, the Board finds that the application proposes a home based business at 28 Allenhurst Court, Gaithersburg, Maryland. The location of the home based business is within the R-90 Cluster Zone and is allowed by special exception as stated in Section 24-216(c) of the Zoning Ordinance (Chapter 24 of the City Code).

The petitioner has shown that the proposed home based business complies with all requirements of Section 24-215. The business, including all inventory, will be located within an 800 square foot area of an existing 3,024 square foot residence. The house is the primary residence of the business owner and no changes to the exterior of the building are proposed. There is sufficient parking on site to accommodate business. Non-resident employees will be on site between the hours of 9:00 a.m. and 6:00 p.m. Monday through Friday only. The applicant has testified that deliveries are limited to regular mail and packages delivery services provided to the address.

The Board finds that the applicant has proved that the application is permissible by Section 24-216(c) of the Zoning Ordinance and that it complies with the procedural requirements set forth in Article VII of the Zoning Ordinance provided for the review of special exceptions by the Board of Appeals.

The testimony of the petitioner has shown that such use will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood; and will cause no objectionable vibrations, fumes, odors, dust, toxicity, glare or physical activity. According to the applicant's statement, all products are hand made using nontoxic raw materials and there are no chemicals present. As stated above no physical changes to the property are proposed, making the use is in harmony with the general character of the neighborhood. The use will not adversely affect the character of activity, the traffic, and the parking conditions of the immediately surrounding uses. The applicant has shown that this use will also not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area.

In conclusion, the Board of Appeals has found that the petitioner has submitted sufficient evidence, arguments and testimony for the approval of a material impact home based business at 28 Allenhurst Court, Gaithersburg, Maryland. The petitioner has shown compliance with § 24-189(b), subject to the following conditions:

1. This special exception is granted for Zosimos Botanicals, LLC, only and shall not be transferable to any other business located at 28 Allenhurst Court.
2. Operating hours for non-resident employees are restricted to weekdays from 9:00 am to 6:00 pm.
3. A maximum of four non-resident employees, volunteers, or interns may conduct business at 28 Allenhurst Court per day.
4. No more than ten (10) deliveries are permitted per week in addition to regular mail delivery.

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED by the Board of Appeals of the City of Gaithersburg on the 19th day of September, 2013, that Case BOA-3280-2013, the petition of Linda Stein for Zosimos Botanicals, LLC, requesting a special exception for a home based business, material impact, at 28 Allenhurst Court, Gaithersburg, Maryland, be APPROVED with the following conditions:

1. This special exception is granted for Zosimos Botanicals, LLC, only and shall not be transferable to any other business located at 28 Allenhurst Court.
2. Operating hours for non-resident employees are restricted to weekdays from 9:00 am to 6:00 pm.
3. A maximum of four non-resident employees, volunteers, or interns may conduct business at 28 Allenhurst Court per day.
4. No more than ten (10) deliveries are permitted per week in addition to regular mail delivery.

Adopted unanimously by the Board of Appeals of the City of Gaithersburg on the 19th day of September 2013. Mr. Kaye, Mr. Macdonald, Mr. Chiswell, and Mr. Wasserman, being present and voting in favor of the action.

Harvey Kaye, Chairperson
Board of Appeals

DATE

THIS IS TO CERTIFY that the foregoing Resolution was adopted by the City of Gaithersburg Board of Appeals, in public meeting assembled, on the 19th day of September, 2013

Caroline Seiden, Planner
Staff Liaison to the Board of Appeals

Any decision by the City Board of Appeals may, within thirty (30) days after the decision is rendered be appealed by any person aggrieved by the decision of the Board and a part to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

The Board of Appeals may reconsider its decision in accordance with its Rules of Procedure upon the request of any party; provided such request is received by writing not more than ten (10) days from the date the Board of Appeals renders its final decision.

STAFF COMMENTS FOR PLANNING COMMISSION

MEETING DATE: September 11, 2013

Sp. Exception: **BOA-3280-2013**

TITLE: Zosimos Botanicals, LLC

REQUEST: **RECOMMENDATION TO THE BOARD
OF APPEALS**

ADDRESS: 28 Allenhurst Court

ZONE: R-90 Cluster

APPLICANT: Linda Stein

STAFF: Caroline Seiden, Planner

Enclosures:

Aerial Photograph
Staff Comments
Board of Appeals Case BOA-3288-2013 (Exhibit list provided)



Special Exception BOA-3280-2013
28 Allenhurst Court

STAFF COMMENTS

Linda Stein, business owner of Zosimos Botanicals, LLC, "the applicant" is requesting approval of a special exception to permit a material impact home based business at her residence at 28 Allenhurst Court. The property is zoned R-90 Cluster.

The applicant is seeking a special exception for this home based business because "material impact" home based businesses require approval by the Board of Appeals as a special exception use. Zosimos Botanicals is considered a material impact home based business because there is more than one non-resident employee at the business.

Operating hours for the non-resident employees is 10:00 am to 5:00 pm Monday through Friday. No non-resident employees are at the residence on weekends.

The applicant has indicated that the business occupies approximately 800 square feet in the basement of the 3,000 square foot home. It complies with all other requirements for a low impact home based business. The applicant has provided a petition and several letters of support from neighbors (Exhibts #11 through #15).

Material impact home based businesses are permitted by special exception in accordance with Section 24-218 (c) of the Zoning Ordinance. The petition complies with the requirements of this section and section 24-189(b) of the Zoning Ordinance. Staff has prepared a draft Resolution of Approval for the Board of Appeals which includes the following conditions:

1. This special exception is granted for Zosimos Botanicals, LLC, only and shall not be transferable to any other business located at 28 Allenhurst Court.
2. Operating hours for non-resident employees are restricted to weekdays from 9:00 am to 6:00 pm.
3. A maximum of three non-resident employees, volunteers, or interns may conduct business at 28 Allenhurst Court per day.
4. No more than ten (10) deliveries are permitted per week in addition to regular mail delivery.
5. Applicant is to comply with the parking requirements of Section 24-215 (g) of the Zoning Ordinance.

STAFF RECOMMENDS THAT THE PLANNING COMMISSION recommend approval of the special exception to the Board of Appeals with the five (5) conditions as listed.

COMMUNICATION: PLANNING COMMISSION

MEMORANDUM TO: Board of Appeals

FROM: Planning Commission

VIA: Caroline Seiden, Planner

DATE: September 12, 2013

SUBJECT: BOA-3280-2013 - Linda Stein
Special Exception to permit a home based business (material impact) at 28 Allenhurst Court, Gaithersburg, Maryland. The property is located in the R-90 Cluster Zone. The special exception is allowed by § 24-216(c) of the City of Gaithersburg Zoning Ordinance (Chapter 24 of the City Code), subject to the review of the Board of Appeals.

At its regular meeting on September 11, 2013, the Planning Commission made the motion below. The Commission did not reach a consensus on a fifth condition regarding on street parking for non-resident employees, which was left to the discretion of the Board of Appeals

Commissioner Winborne moved, seconded by Alternate Commissioner Coratola, to recommend APPROVAL of Special Exception Case BOA-3280-2013, to the Board of Appeals, finding it in compliance with Zoning Ordinance §§ 24-218(c) and 24-189(b), with the following conditions:

1. This special exception is granted for Zosimos Botanicals, LLC, only and shall not be transferable to any other business located at 28 Allenhurst Court;
2. Operating hours for non-resident employees are restricted to weekdays from 9:00 am to 6:00 pm;
3. A maximum of four non-resident employees, volunteers, or interns may conduct business at 28 Allenhurst Court per day; and
4. No more than ten (10) deliveries are permitted per week in addition to regular mail delivery.

Vote: 5-0

Board of Appeals
BOA-3280-2013
Exhibit #28

From Staff

ORDINANCE NO. O-8-13

AN ORDINANCE TO AMEND CHAPTER 24 (CITY ZONING ORDINANCE), ARTICLE I, ENTITLED, "IN GENERAL," §§ 24-1 AND 24-1.1.; ARTICLE III, ENTITLED, REGULATIONS APPLICABLE TO PARTICULAR ZONES," DIVISION 1A, §§ 24-22(b) AND 24-22(c), DIVISION 1, § 24-25(11), DIVISION 2, §§ 24-29(5) AND 24-30(5), DIVISION 4, § 24-43A(2), DIVISION 5, § 24-57(6), DIVISION 6, § 24-66A(4), DIVISION 7, §§ 24-75(10) AND 24-175A(1), DIVISION 8, §§ 24-86(10) AND 24-86A, DIVISION 10, §§ 24-102.A(10) AND 24-102B(1), DIVISION 11, § 24-111(13) AND 24-112(6), DIVISION 12, §§ 24-117(27) AND 24-118(9) AND 24-118(10), DIVISION 13, §§ 24-123(4) AND 24-123A(1), DIVISION 14, § 24-136F.(6), DIVISION 17, § 24-151(17), DIVISION 18, §§ 24-160A(12) AND 24-160B, DIVISION 19, § 24-160D.3(d); ARTICLE IV, ENTITLED, "SUPPLEMENTARY ZONE REGULATIONS," § 24-167A(D)2.(a)(1), AND ARTICLE VII, ENTITLED, "BOARD OF APPEALS."

Text Amendment CTAM-2682-2013

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, Maryland, in public meeting assembled, that Chapter 24 of the City Code (City Zoning Ordinance), Articles I, III, IV, and VII, are amended to read as follows:

Chapter 24

ZONING

ARTICLE I. IN GENERAL

Sec. 24-1. Definitions.

* * * *

*Special exception.** A special exception is a grant of a specific use that would not be appropriate generally or without restriction and shall be based on a finding that the requirements of the zoning law governing the special exception on the subject property are satisfied and the use on the subject property is consistent with the plan and is compatible with the existing neighborhood throughout the zone, but which, if controlled as to number, area, location or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity or general welfare. Such uses may be permitted in such zone as special exceptions, if specific provision for such special exceptions is made in this chapter.

* If a conflict between this statute and State code exists, the State prevails.

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
Single strikethrough	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by Amendment.</i>
Double boldface strikethrough	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

* * * *

Telecommunications facility. Any facility, excluding a satellite television dish antenna, established for the purpose of providing wireless voice, data and image transmission within a designated service area. A telecommunication facility must not be staffed. A telecommunication facility consists of one or more antennas attached to a support structure and related equipment. Antennas are limited to the following types and dimensions: omni-directional (whip) antennas not exceeding fifteen (15) feet in height and three (3) inches in diameter; directional or panel antennas not exceeding six and one-half (6½) feet in height and two (2) feet in width. An antenna may be mounted to a building, a building rooftop or a freestanding monopole in accordance with sections 24-167A(GD)1 and/or 2. Equipment may be located within a building, an equipment cabinet, or an equipment room within a building.

* * * *

Transcript, Official. A verbatim written account of a hearing, meeting, or proceeding, which is certified to be an accurate record of the hearing, meeting, or proceeding and is prepared by or under the direction of the City.

* * * *

*Variance.** A modification only of the density, bulk, dimensional, or area requirements in the zoning law that is not contrary to the public interest, and where, owing to conditions peculiar to the property and not because of any action taken by the applicant, a literal enforcement of the zoning law would result in unnecessary hardship or practical difficulty, as specified in the zoning law. ~~relaxation of the terms of this chapter where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of this chapter would result in unnecessary and undue hardship. As used in this chapter, a variance is authorized for only height, area and size of structure or size of yards and open spaces. Establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zones or adjoining zones.~~

* * * *

Sec. 24-1.1. Rules of interpretation, definitions and substantive provisions.

Whenever in this chapter 24 the terms "dwelling, multiple-family," "multi-family dwellings," "multiple-family dwellings," "multiple-family apartments," "multi-family housing units," "multi-family residential units," "multi-family residential structures" or "multi-family" appears those terms shall mean either "dwelling, multiple family, condominium" or "dwelling, multiple family" as defined in section 24-1 of this chapter, except where in any master plan, special condition contained in a master plan or in a

^{*} If a conflict between this statute and State code exists, the State prevails.

condition of approval in any zoning, subdivision, site plan or other regulatory review or application for the same, a use is specifically designated, indicated or specified to be either a "dwelling, multi-family, condominium" or "dwelling, multi-family," then the meaning and application to said use shall be restricted as written or stated.

In this chapter, words in the present tense include the future; the singular number includes the plural number and the plural the singular; and the words "shall" or "must" are mandatory and not optional.

In computing any period of time in which an act is to be done or a default occurs, the day of the act, event, or default, after which the designated period of time begins to run is not included. The last day of the period so computed is –included unless: (1) it is a Saturday, Sunday or a legal holiday, in which event the period so computed includes the next day, which is neither a Saturday, Sunday nor a legal holiday; or, (2) the act to be done is the filing of some paper with the city or a in court, and the city offices or the court on such last day of the period is not open, or is closed for a part of a day, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, a legal holiday, or a day on which such office is not open the entire day during ordinary business hours. When the period of time allowed is more than seven (7) days, intermediate Saturdays, Sundays and legal holidays are included; but if the period of time allowed is seven (7) days or less, intermediate Saturdays, Sundays, and legal holidays shall not be counted in computing the period of time.

* * * *

ARTICLE III. REGULATIONS APPLICABLE TO PARTICULAR ZONES

DIVISION 1A. GENERALLY

Sec. 24-22. Permitted and special exception uses.

* * * *

(b) *R-6 Zone*

Use

Zone R-6

* * *

Telecommunications facility⁶

SE

* * *

⁶Subject to the requirements of section 24-167A(GD)(2).

* * *

(c) *Buffer zones.*

Use

Zone RB

Zone CB

* * *

Telecommunications facility⁷

SE

SE

* * *

⁷Subject to the requirements of section 24-167A(GD)(2).

* * *

DIVISION 1. R-A ZONE, LOW DENSITY RESIDENTIAL

* * *

Sec. 24-25. Uses permitted as special exceptions.

* * *

- (11) Telecommunications facilities, subject to the requirements of section 24-167A(GD)(2).

* * *

DIVISION 2. R-90 ZONE, MEDIUM DENSITY RESIDENTIAL

Sec. 24-29. Uses permitted as special exceptions.

* * * *

- (5) Telecommunications facilities, subject to the requirements of section 24-167A(GD)(2).

* * * *

Sec. 24-30. Cluster development.

- (5) *Special exceptions uses.* The following uses are permitted in cluster developments as special exceptions after approval by the board of appeals:

Telecommunications facilities, subject to the requirements of section 24-167A(GD)(2).

* * * *

DIVISION 4. RP-T ZONE, MEDIUM DENSITY RESIDENTIAL

Sec. 24-43A. Uses by special exception.

* * * *

- (2) Telecommunications facilities, subject to the requirements of section 24-167A(GD)(2).

* * * *

DIVISION 5. R-20 ZONE, MEDIUM DENSITY RESIDENTIAL

Sec. 24-57. Uses permitted as special exception.

* * * *

- (6) Telecommunications facilities, subject to the requirements of section 24-167A(GD)(2).

DIVISION 6. R-18 ZONE, MEDIUM DENSITY PLANNED RESIDENTIAL

Sec. 24-66A. Uses permitted as special exception.

* * * *

- (4) Telecommunications facilities, subject to the requirements of section 24-167A(GD)(2).

* * * *

DIVISION 7. R-H ZONE, HIGH DENSITY RESIDENTIAL

Sec. 24-75. Permitted uses.

* * * *

- (10) Telecommunications facilities located entirely within an existing structure or located on the rooftop of an existing structure other than a single-family dwelling unit, subject to the requirements of section 24-167A(GD)(1).

Sec. 24-75A. Uses permitted as special exceptions.

* * * *

- (1) Telecommunications facilities, subject to the requirements of section 24-167A(GD)(2).

* * * *

DIVISION 8. R-O ZONE, PLANNED RESIDENTIAL

* * * *

Sec. 24-86. Uses permitted by right.

* * * *

- (10) Telecommunications facilities located entirely within an existing structure or located on the rooftop of an existing structure other than a single-family dwelling unit, subject to the requirements of section 24-167A(GD)(1).

Sec. 24-86A. Uses permitted by special exception.

* * * *

Telecommunications facilities, subject to the requirements of section 24-167A(GD)(2).

* * * *

DIVISION 10. C-P ZONE, COMMERCIAL OFFICE PARK

Sec. 24-102. Uses.

* * * *

A. Uses permitted by right.

* * * *

- (10) Telecommunications facilities located entirely within an existing structure or located on the rooftop of an existing structure other than a single-family dwelling unit, subject to the requirements of section 24-167A(GD)(1).

B. Uses permitted by special exception. Uses permitted by special exception must be approved by the board of appeals.

- (1) Telecommunications facilities, subject to the requirements of section 24-167A(GD)(2).

* * * *

DIVISION 11. C-1 ZONE, LOCAL COMMERCIAL

* * * *

Sec. 24-111. Uses permitted by right.

* * * *

- (13) Telecommunications facilities located entirely within an existing structure or located on the rooftop of an existing structure other than a single-family dwelling unit, subject to the requirements of section 24-167A(GD)(2).

Sec. 24-112. Uses permitted as special exceptions.

* * * *

- (6) Telecommunications facilities, subject to the requirements of section 24-167A(GD)(2).

* * * *

DIVISION 12. C-2 ZONE, GENERAL COMMERCIAL

* * * *

Sec. 24-117. Uses permitted by right.

The following uses are permitted by right in the C-2 Zone:

* * * *

- (27) Telecommunications facilities located entirely within an existing structure or located on the rooftop of an existing structure other than a single-family dwelling unit, subject to the requirements of section 24-167A(GD)(1).

* * * *

Sec. 24-118. Uses permitted as special exceptions.

* * * *

- (9) Towers, poles, antennas and ancillary buildings, in connection with the operation of a commercial radio or television broadcasting station subject to the standards and procedures in section 167A(DB).
- (10) Telecommunications facilities, subject to the requirements of section 24-167A(GD)(2).

* * * *

DIVISION 13. C-3 ZONE, HIGHWAY COMMERCIAL

* * * *

Sec. 24-123. Permitted uses.

* * * *

- (4) Telecommunications facilities located entirely within an existing structure or located on the rooftop of an existing structure other than a single-family dwelling unit, subject to the requirements of section 24-167A(GD)(1).

Sec. 24-123A. Uses permitted as special exception.

* * * *

- (1) Telecommunications facilities, subject to the requirements of section 24-167A(GD)(2).

* * * *

DIVISION 14. I-1 ZONE, LIGHT INDUSTRIAL

Sec. 24-136. Uses permitted by right.

The following uses are permitted by right in the I-1 Zone:

* * * *

F. TRANSPORTATION, COMMUNICATION AND UTILITIES:

* * * *

- (6) Telecommunications facilities, subject to the requirements of section 24-167A(GD)(1).

* * * *

DIVISION 17. E-1 ZONE, URBAN EMPLOYMENT

Sec. 24-151. Permitted uses.

The following uses are permitted in the E-1 Zone:

* * * *

- (17) Telecommunications facilities located entirely within an existing structure or located on the rooftop of an existing structure other than a single-family dwelling unit, subject to the requirements of section 24-167A(GD)(1).

* * * *

DIVISION 18. E-2 ZONE, MODERATE INTENSITY INDUSTRIAL PARK

Sec. 160A. Permitted uses.

* * * *

- (12) Telecommunications facilities located entirely within an existing structure or located on the rooftop of an existing structure other than a single-family dwelling unit, subject to the requirements of section 24-167A(GD)(1).

Sec. 160B. Special exception uses.

The following uses are permitted in the E-2 Zone as special exceptions upon approval by the board of appeals in accordance with the provisions of section 24-189:

* * * *

Telecommunications facilities, subject to the requirements of 24-167A(GD)(2).

* * * *

DIVISION 19. MXD ZONE, MIXED USE DEVELOPMENT

* * * *

Sec. 160D.3. Uses permitted.

* * * *

(d) *Special exception uses.* The following uses shall be special exception uses in the MXD zone subject to approval by the city board of appeals notwithstanding the fact that such use may be allowed as a permitted use in any other zones referred to in the above subsections (a) and (b):

* * * *

Telecommunications facilities, subject to the requirements of section 24-167A(D)(2).

ARTICLE IV. SUPPLEMENTARY ZONE REGULATIONS

* * * *

Sec. 167A. Satellite television antennas and towers, poles, antennas and/or other structures intended for use in connection with transmission or receipt of radio or television signals and/or telecommunications facilities.

(D) Telecommunications facilities.

* * * *

2. Standards and requirements applicable to special exceptions for telecommunications facilities.

(a) ~~An application~~ petition for a special exception for a telecommunication facility may be approved by the board of appeals if the board finds that:

(1) Complies with all of the standards contained in section 24-167A(~~GD~~)(1).

* * * *

ARTICLE VII. BOARD OF APPEALS*

Sec. 24-185. Created; composition; appointment and removal of members; compensation.

There is hereby created and established a city board of appeals which shall consist of five (5) members and one alternate who shall be appointed by the mayor and confirmed by the city council for three-year terms. Members of the board may be removed for cause by the city council upon written charges and after public hearing. An alternate member shall act in the place of an absent or disabled board member. Members of the board may receive such compensation as deemed appropriate by the city council. The board shall elect a chairperson and vice-chairperson.

Sec. 24-186. Rules; meetings, oaths; witnesses; record of proceedings.

(a) The board of appeals shall adopt rules of procedure governing conduct of its proceedings and matters under its jurisdiction. Meetings of the board shall be open to the public and shall be held at the call of the chairperson and at such other times as the board may determine. The chairperson, or in his absence the vice-chairperson, may administer oaths and compel the attendance of witnesses.

* **State law reference** — Board of appeals, Subtitle 3, Title 4, Land Use Article, Anno. Code of Md., 1957, art. 66B, § 4.07.

(b) The board shall keep minutes and, where appropriate, official transcripts, voice recordings and other records on matters coming before the board and showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, all of which shall be a public record and filed immediately in the office of planning and code administration.

Sec. 24-187. Powers and duties.

The board of appeals shall have the following functions, powers and duties:

- (a) *Administrative review.* To hear and decide appeals where it is alleged that there is an error in any final order, requirement, decision or determination made by any administrative official or department of the city government or the planning commission or historic district commission in the enforcement and administration of this chapter, the building code, subdivision regulations or any other ordinance or regulation which may hereafter be designated by the city council for such administrative review ~~by the city council~~; provided, however, that appeals alleging error by the planning commission or historic district commission shall be by oral argument or written statement based solely on the evidence submitted and received in the planning commission or historic district commission proceedings.
- (b) *Special exceptions.* To hear and decide only those special exceptions as the board of appeals is specifically authorized to pass on by the terms of this chapter.

The board of appeals is empowered to prescribe appropriate conditions and limitations upon the approval of special exceptions. Special exceptions approved by the board shall be implemented in accordance with the terms and/or conditions set forth in the board's decision and shall include the requirement that the petitioner shall be bound by all of his testimony and exhibits of record, the testimony of his witnesses and representations of his attorneys, to the extent that such evidence and representations are identified in the board's opinion approving the special exception. Violation of such conditions and limitations shall be deemed a violation of this chapter and, further, shall constitute grounds for revocation of such special exception.

~~The board of appeals is empowered to prescribe appropriate conditions and limitations upon the approval of special exceptions. Special exceptions approved by the board shall be implemented in accordance with the terms and/or conditions set forth in the board's decision and shall include the requirement that the petitioner shall be bound by all of the petitioner's testimony and exhibits of record, the testimony of the petitioner's witnesses and representation of the petitioner's attorneys, to the extent that such evidence and representations are identified in the board's opinion approving the special exception. Violation of such conditions and~~

~~limitation shall be deemed a violation of this chapter and, further, shall constitute grounds for revocation of such special exception.~~

- (c) *Variances.* To authorize on appeal in specific cases a variance from the strict application of the terms or requirements of this chapter. Variations or waivers under the traditional neighborhood design (TND) option are not variances subject to the board's jurisdiction.

In granting any variance the board may prescribe appropriate conditions and limitations in conformance with this chapter, Violations of such conditions and limitations shall be deemed a violation of this chapter and, further, shall constitute grounds for revocation of such variance.

These provisions shall not be construed to permit the board, under the guise of a variance, to authorize a use of land not otherwise permitted in the zone involved or permit a variance specifically prohibited by the terms of this chapter or grant a variance that will increase the intensity of an existing nonconforming use.

24-188. General requirements and procedures.

(a) Petitions filed for administrative review may be initiated by any person aggrieved by a final order, requirement, decision or determination as set forth in subsection (a) of section 24-187 of this Code. Such petition shall be filed within seventeen (17) days of the date of the action from which the appeal is filed, unless extended by law or by order of the board upon good cause shown not more than twenty-one (21) days after the date of the action appealed from. The filing of a petition for administrative review shall stay all proceedings in furtherance of the action appealed from unless such stay would cause immediate peril to life or property.

Petitions for a special exception or a variance may be filed by any person, entity or government agency with any financial, contractual or proprietary interest in the affected property. Should petitions be filed by one other than the owner of the property, those petitions must be filed with the owner's written consent.

(b) A petition for special exception, variance or administrative review shall be submitted to the board of appeals in writing on forms provided for this purpose and accompanied by a filing fee which shall be established from time to time by the city council. A petition shall not be accepted for filing which does not contain an appropriate application, filing fee and supporting material set forth in subsection (c) below.

(c) ~~An application~~ petition for special exception, variance or administrative review shall be accompanied by the following materials and/or information:

(1) *Special exceptions.*

- a. Plans and drawings that comply with section 24-169(c).

- b. A statement explaining in detail how the special exception is to be operated, including hours of operation, number of anticipated employees, occupants and clientele, equipment involved and any special conditions or limitations which the petitioner proposes for adoption by the board.
- c. List of additional interested parties.
- d. If the petitioner is not the owner of the property involved, ~~or the authorized agent of the owner,~~ the lease, rental agreement or contract to purchase by which the petitioner's legal right to prosecute the petition is established.
- e. Applicable master plan maps reflecting proposed land use, zoning and transportation, together with any other portions of the applicable master plan deemed pertinent by the petitioner.
- f. All additional exhibits which the petitioner intends to introduce and/or the identification of exhibits intended to be introduced at the public hearing.
- g. A summary of what the petitioner expects to prove, including the names of petitioner's witnesses, summaries of the testimony of expert witnesses and the estimated time required for presentation of the petitioner's case. All expert reports shall be filed at least fifteen (15) days prior to the public hearing.
- h. A listing of the names and addresses of all persons required to receive notice pursuant to section 24-188(e) of this Code. If an abutting or confronting property is a condominium, cooperative or is owned by a homeowner's association then notice shall be given to the governing body and resident agent of the condominium cooperative or homeowner's association.
- i. Required fee (see fee schedule).

(2) *Variances.* Items a., c., f., g., ~~and h., and i.~~ of paragraph (1) above applicable to special exceptions.

(3) *Administrative review.*

- a. The action, document and all records upon which the appeal was filed or based.
- b. List of specific section or sections of the City Code relied upon or authorizing the review.
- ~~c. List of additional interested parties.~~

- cd. Copies of additional exhibits or documents upon which the petitioner relies.
- d. Deposit for cost of official transcript of agency proceeding, if required, estimated on length of hearing. Balance to be paid by petitioner prior to scheduling of hearing date.
- e. List of parties.
 - i. For administrative review of Planning Commission or Historic District Commission decision, list of parties who participated in the proceeding.
 - ii. A listing of the names and addresses of all persons required to receive notice pursuant to section 24-188(e) of this Code. If an abutting or confronting property is a condominium, cooperative or is owned by a homeowner's association, then notice shall be given to the governing body and resident agent of the condominium, cooperative or homeowner's association.
- f. Required fee (see fee schedule).
- g. Copy of official zoning vicinity map with a one-thousand foot radius surrounding the subject property and other information to indicate general conditions of use and existing improvements on adjoining and confronting properties.

(d) All ~~applications~~ petitions for special exceptions shall be referred to the city manager or his designee and the planning commission for analysis, review and recommendations. Petitions for variances shall be referred to the city manager or his designee, but shall only be referred to the planning commission at the discretion and direction of the board of appeals. Comments and recommendations shall be forwarded to the board of appeals prior to the public hearing on the special exception or variance.

(e) Notice of a public hearing on any special exception, or variance or, when applicable, administrative review, shall be given by mail to the petitioner, the owner of the property and all abutting and confronting property owners of the property under consideration at least ~~fifteen (15)~~ twenty two (22) days prior to the date of the public hearing. Notice shall be published at least ~~fifteen (15)~~ twenty two (22) days prior to the public hearing. In addition, notice of such hearing shall be posted by the petitioner with a sign provided by the board of appeals staff on the property under consideration:

- (1) At minimum, the sign shall contain the following information:
 - a. The title of "board of Appeals";

- b. The type of petition pending;
 - c. The ~~application~~petition number;
 - d. The date, and place of the hearing; and
 - e. A phone number to call for additional information.
- (2) If the property has frontage on one or more improved streets, there shall be one sign posted for each one thousand (1,000) feet (or fraction) of frontage on each street. The sign(s) shall be posted on the property near the street right-of-way, so as to be visible from the improved portion of the street. When more than one sign is required to be posted along a street, the signs shall, where practicable, be evenly spaced along the street.
 - (3) If the property does not have frontage on an improved public street, then one sign shall be placed on the property by the petitioner. This sign shall be near the boundary of the property and visible from an adjoining property. Another sign shall be placed by the petitioner near to, and visible from, the improved portion of the nearest, most-traveled street. This sign shall indicate it is not on the subject property.
 - (4) The minimum size of each sign shall be two (2) feet in width by three (3) feet in height for all signs to be located abutting streets that are two (2) lanes or smaller. However, the minimum size of each sign shall be four (4) feet in width by three (3) feet in height, for all signs to be located abutting streets that are larger than two (2) lanes.
 - (5) All signs posted shall be conspicuous and legible.
 - (6) The petitioner shall be responsible for reasonable maintenance of all signs. In the event a sign is removed, falls down, or otherwise is not on the property or in the right-of-way during the pendency of and until the date of the hearing, it shall be the responsibility of the petitioner to re-post the sign.
 - (7) The petitioner shall file a written statement in the record of posting.
 - (8) The sign shall remain posted until the board of appeals has issued its written opinion.

(f) The board shall hold a public hearing on all petitions for special exceptions, variance or administrative review with the exception of appeals alleging error by the planning commission or the historic district commission wherein administrative review shall be by oral argument or written statement based solely on the evidence submitted and received in the commission proceedings. The board's hearings shall be public and any party may appear in person or by agent or attorney. The conduct of the hearing shall be conducted pursuant to the board's rules of

procedure. Hearings may be adjourned or continued from time to time at the board's discretion; provided, that any such adjournment or continuance shall be to a time and date certain and all parties shall be given notice thereof who were required to be notified of the original hearing. The board shall have authority to adopt, and amend from time to time, rules of procedure to govern the conduct of its proceedings.

(g) The board shall have authority to adopt, and amend from time to time, rules of procedure to govern the conduct of its proceedings. No petition for special exception or variance may be amended by petitioner after consideration by the planning commission so as to materially alter the original request or proposal unless done so upon the recommendation of the commission or with the prior consent of the board of appeals prior to the public hearing.

(h) No petition for special exception or variance may be amended by petitioner after consideration by the planning commission so as to materially alter the original request or proposal unless done so upon the recommendation of the commission or with the prior consent of the board of appeals prior to the public hearing. The board of appeals shall maintain a record of its proceedings, including all exhibits filed and accepted, minutes of its proceedings and decisions and transcripts or voice recordings of all testimony presented.

(i) The board of appeals shall maintain a record of its proceedings, including all exhibits filed and accepted, minutes of its proceedings and decisions and transcripts or voice recordings of all testimony presented. The petitioner for a special exception, variance or administrative review shall have the burden of proof which shall include the burden of going forward with the evidence and the burden of persuasion on all issues of fact which are to be determined by the board of appeals.

(j) The petitioner for a special exception, variance or administrative review shall have the burden of proof which shall include the burden of going forward with the evidence and the burden of persuasion on all issues of fact which are to be determined by the board of appeals.

Sec. 24-189. Findings required.

(a) *Administrative review.* A petition for administrative review may be granted when the board of appeals finds from the evidence of record that the final order, requirement, decision or determination which is the subject of the appeal was clearly erroneous or not in accordance with the law.

(b) *Special exceptions.* A special exception may be granted when the board of appeals finds from the evidence of record that the proposed use:

- (1) is a permissible special exception within the zone and that the application/petition complies with all procedural requirements set forth in this article;

- (2) Complies with all standards and requirements specifically set forth for such use as may be contained in this chapter and the development standards for the zone within which the intended use will be located;
- (3) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood; and will cause no objectionable noise, vibrations, fumes, odors, dust, toxicity, glare or physical activity;
- (4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structure or conversion of existing structures; as well as the intensity and character of activity, traffic and parking conditions and number of similar uses;
- (5) Will be consistent with the master plan or other planning guides or capital programs for the physical development of the district;
- (6) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area;
- (7) Will be served by adequate public services and facilities, including police and fire protection, water and sanitary sewer, storm drainage, public roads and other public improvements; and
- (8) When located in a residential zone where buildings or structures are to be constructed, reconstructed or altered shall, whenever practicable, have the exterior appearance of residential buildings and shall have suitable landscaping, screening or fencing.

(c) *Variances.** A variance from the terms of this chapter may be authorized by the board of appeals upon proof by the evidence of record, ~~at the property under consideration is unique and unusual in a manner different from the surrounding properties to the extent that the unique or unusual circumstances causes the zoning standards to impact disproportionately on the property and further, upon proof from the evidence of record that:~~

- ~~(1) By reason of exceptional narrowness, shallowness, shape, topographical conditions or other extraordinary situations or conditions peculiar to a specific parcel of property or improvements thereon, the strict application of the terms and regulations of this chapter would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner's use of his property;~~
- ~~(2) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional circumstances;~~

* If a conflict between this statute and State code exists, the State prevails.

- ~~(3) Such variance will not be detrimental to the use and enjoyment of neighboring properties;~~
- ~~(4) Such variance can be granted without substantial impairment to the approved master plan affecting the subject property;~~
- ~~(5) Such variance will not substantially impact or affect the character of the surrounding neighborhood;~~
- ~~(6) The extraordinary situation or condition or the exceptional or undue hardship was not caused or created by the petitioner or any predecessor in interest; and~~
- ~~(7) The grant of the variance will not permit or authorize a use of property, prohibited or not permitted under the terms of this chapter.~~

Sec. 24-190. Decisions of board.

(a) The decision of the board of appeals on any matter considered under this article shall be ~~in writing~~ by written resolution containing findings and conclusions and rendered within sixty (60) days from the date of the public hearing unless such time is extended by the board. The affirmative vote of a majority of the board present shall be required to grant an ~~application~~ petition for special exception or petition for variance. The same majority vote of the board shall be required to reverse or affirm, in whole or in part, any order, requirement, decision or determination which is the subject of administrative review. If the necessary total of affirmative votes shall not be achieved, the ~~application or petition~~ shall be denied. ~~A copy of the board's decision shall promptly be mailed to all persons entitled to original notice of the hearing and to all persons appearing and testifying in person or by counsel.~~

(b) All decisions of the board under this article shall be based solely upon the evidence of record.

~~(c) The board may reconsider its decisions upon its own motion or upon request of any party, provided such request or motion is received not more than ten (10) days from the date the board rendered its decision. The board may promulgate additional rules with respect to reconsideration and rehearing.~~

~~(cd)~~ The decision of the board shall not preclude any department or agency of the city, when appropriate, to add specific conditions or requirements not inconsistent with the board's decision, which are necessary to comply with any state law, ordinances or regulations of the city, or where necessary to protect adjacent properties, the general neighborhood and residents, workers and visitors therein.

~~(d)~~ The date of the decision is the date the resolution is signed. A copy of the board's decision shall promptly be mailed to all persons entitled to original notice of the hearing and to all persons appearing and testifying in person or by counsel.

Sec. 24-190A. Rehearing and Reconsideration.

(a) The board may reconsider its decisions or rehear any proceeding upon its own motion or upon request of any party, provided such motion or request is received not more than ten (10) days from the date the board rendered its decision. The board may promulgate additional rules with respect to reconsideration and rehearing.

(b) A request for reconsideration or rehearing must specifically state the basis upon which the party contends the board of appeals' decision should be reconsidered or reheard. The request may include a request for oral argument on the request. The party requesting reconsideration or rehearing must serve all parties who received the original opinion with a copy of the request at the same time the request is made to the board of appeals. The board shall post notice of the date the board will meet to consider and/or hear the reconsideration or rehearing request on the city's web site and at city hall.

(c) The board of appeals may grant reconsideration or rehearing only upon evidence:

- (1) of a clear showing that the action of the board of appeals did not conform to relevant law or its rules of procedure; or
- (2) an irregularity, mistake, or fraud; or
- (3) that certain pertinent and significant new evidence relevant to the board of appeals' decision could not reasonably have been presented at the hearing before the board of appeals or otherwise included in the record; or
- (4) of such other appropriate compelling bases as determined by the board of appeals.

(d) Within five (5) days of filing the request, any party may file a written response and request oral argument. All parties to the proceeding must be served a copy of the response. The board may grant oral argument in its discretion or may render a decision on the written request and response.

(e) Any decision on a request for rehearing or reconsideration not granted within twenty (20) days from the date received shall be deemed denied; provided, however, if the board prior to the expiration of this twenty (20) day period believes additional time is required to take action on the request, the board by resolution may extend the effective date of the decision which is the subject of the request.

(f) The fact that a party raises an issue worthy of reconsideration does not itself require the board of appeals to reconsider a prior action.

(g) If a motion to reconsider has been duly adopted by the board of appeals, the prior final decision of the board shall be void and the record before the Board shall be automatically reopened. The Board shall schedule a hearing for a subsequent date

and time, providing all parties of record at least ten (10) days advance written notice of the hearing.

(h) if a judicial appeal is filed by an aggrieved party prior to the board's decision on a request for reconsideration or rehearing, then the board of appeals shall be divested of jurisdiction to decide the request.

Sec. 24-192. Compliance; revocation of special exception.

(a) The board of appeals shall prescribe a time limit in which the special exception is required to be completed. The board of appeals shall conduct a public hearing upon the failure to complete the special exception within the prescribed time and following the public hearing may terminate the special exception. The board may, upon written request and for good cause shown, extend the time for completion of the special exception.

(b) The board of appeals is authorized to amend or modify the terms or conditions of a special exception upon the request of the special exception holder or upon recommendation of any city department or the planning commission, or pursuant to a show cause hearing provided in section 24-192 of this Code. No public hearing shall be required unless the proposed modification will substantially change the nature, character or intensity of the use or materially impact the neighborhood in which such use is located. If the board determines that a hearing is required, the notice and hearing provisions contained in section 24-188 of this Code shall apply.

(c) The board of appeals is authorized to amend or modify the terms or conditions of a special exception upon the request of the special exception holder or upon recommendation of any city department or the planning commission, or pursuant to a show cause hearing provided in section 24-192 of this Code. No public hearing shall be required unless the proposed modification will substantially change the nature, character or intensity of the use or materially impact the neighborhood in which such use is located. If the board determines that a hearing is required, the notice and hearing provisions contained in section 24-188 of this Code shall apply.

(d) After public hearing, the board may revoke a special exception upon finding from the evidence of record that the cessation of the use of the special exception or activities constituting or necessary to the special exception have ceased for a period of at least six (6) month duration.

Sec. 24-193. Appeals from Board decisions.

Any person, taxpayer, board or department of the city aggrieved by any decision of the board of appeals may within thirty (30) days of the date of the board's decision appeal the decision to the circuit court for Montgomery County and thereafter to the appellate courts of this state for further review. Appeals shall be subject to the provisions of the Maryland Rules of Procedure governing administrative appeals.

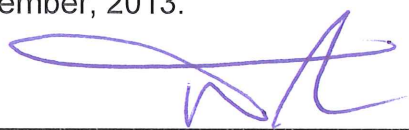
ADOPTED, by the City Council of the City of Gaithersburg, this 3rd day of September, 2013.


SIDNEY A. KATZ, MAYOR and
President of the Council

DELIVERED, to the Mayor of the City of Gaithersburg, this 3rd day of September, 2013. APPROVED, by the Mayor of the City of Gaithersburg, this 3rd day of September, 2013.


SIDNEY A. KATZ, MAYOR

THIS IS TO CERTIFY that the foregoing Ordinance was adopted by the City Council of Gaithersburg, in public meeting assembled, on the 3rd day of September, 2013, and the same was APPROVED by the Mayor of the City of Gaithersburg on the 3rd day of September, 2013. This Ordinance will become effective on the 24th day of September, 2013.


Tony Tomasello, City Manager

ORDINANCE NO. O-9-13

AN ORDINANCE TO AMEND CHAPTER 16 OF THE CITY CODE,
ENTITLED "PEDDLERS, HAWKERS AND SOLICITORS," SO AS TO AMEND
§ 16-6, ENTITLED, "SAME-REVOCATION."

BE IT ORDAINED, by the Mayor and Council of the City of Gaithersburg, in public meeting assembled, that Chapter 16 of the City Code, entitled, "Peddlers, Hawkers and Solicitors," is hereby amended to read as follows:

City Code

Chapter 16

PEDDLERS, HAWKERS AND SOLICITORS

* * * *

Sec. 16-6.. Same—Revocation.

Any certificate issued under the provisions of this ordinance may be revoked by the city manager, after notice and hearing before the city manager, for any fraud, misrepresentation or false statement contained in the application or for failure to correct any statement in such application as required hereinabove, or for failure to observe the conditions of the certificate or for violation of any provisions or requirements of this chapter, or upon any subsequent conviction of any crime or code violation.

Notice of hearing for revocation of such certificate shall be in writing, addressed to the applicant at the address given by him to the city manager, setting forth the specific reason or reasons for the hearing and the time and place thereof, and shall be given to the holder at least three days in advance of the hearing if the service is personal and five days from the date of mailing, postage prepaid; provided, however, that such notice may be waived and an immediate hearing had upon the request of the holder of such certificate.

The decision by the city manager to revoke a registration certificate may be appealed petitioned for administrative review within ten days of the date of the decision to the city board of appeals, as provided in Article VII of the Zoning Ordinance pursuant to the provisions of section 24-187(a) of this code.

Boldface

Underlining

~~Single strikethrough~~

Double underlining

~~Double boldface strikethrough~~

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by Amendment.

Deleted from existing law or the bill by amendment.

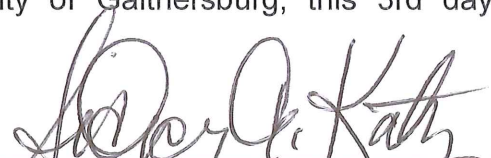
Existing law unaffected by bill.

ADOPTED, by the City Council of the City of Gaithersburg, this 3rd day of September, 2013.




SIDNEY A. KATZ, MAYOR and
President of the Council

DELIVERED, to the Mayor of the City of Gaithersburg, this 3rd day of September, 2013. APPROVED, by the Mayor of the City of Gaithersburg, this 3rd day of September, 2013.



SIDNEY A. KATZ, MAYOR

THIS IS TO CERTIFY that the foregoing Ordinance was adopted by the City Council of Gaithersburg, in public meeting assembled, on the 3rd day of September, 2013, and the same was APPROVED by the Mayor of the City of Gaithersburg on the 3rd day of September, 2013. This Ordinance will become effective on the 24th day of September, 2013.



Tony Tomasello, City Manager

CITY OF GAITHERSBURG
BOARD OF APPEALS
RULES OF PROCEDURE

Adopted September 24, 2013



PLANNING AND CODE ADMINISTRATION
31 SOUTH SUMMIT AVENUE
GAITHERSBURG, MARYLAND 20877
TELEPHONE: (301) 258-6330
plancode@gaitHERSBURGMD.GOV
www.gaitHERSBURGMD.GOV

**CITY OF GAITHERSBURG
BOARD OF APPEALS, RULES OF PROCEDURE**

Adopted: September 24, 2013

Published: September 2013

MAYOR AND CITY COUNCIL

Mayor Sidney A. Katz
Council Vice President Michael A. Sesma
Cathy C. Drzyzgula
Jud Ashman
Henry F. Marraffa, Jr.
Ryan Spiegel

PLANNING COMMISSION

Chair John Bauer
Vice-Chair Matthew Hopkins
Commissioner Danielle L. Winborne
Commissioner Lloyd S. Kaufman
Commissioner Geraldine Lanier
Alternate Commissioner Joseph Coratola

BOARD OF APPEALS

Chairperson Harvey Kaye
Vice Chairperson Victor Macdonald
Carol Rieg
Robert Chiswell
Aaron Kotok
Alternate Gene Wasserman

CITY MANAGER

Tony Tomasello

PLANNING AND CODE ADMINISTRATION

John Schlichting, Director, Planning & Code Administration
Lauren Pruss, Planning Director
Trudy Schwarz, Community Planning Director
Kirk Eby, GIS Planner
Caroline Seiden, Planner

TABLE OF CONTENTS

§1.0. General Information	4
§2.0. Filing of Appeals, Petitions	6
§3.0. Official Records and Calendar	8
§4.0. Notice of Hearings.....	8
§5.0. Hearings.....	9
§6.0. Decisions	11
§7.0. Rehearing and Reconsideration.....	12
§8.0. Officers	13
§9.0. Records and Minutes	14
§10.0. Communications.....	15
§11.0. Rule Changes and Supplement.....	16

1.0. General Information

1.1. Rules and Procedures of the Board of Appeals are supplementary to requirements set forth in the City Zoning Ordinance, Chapter 24, Article VII, as amended. All applicants, appellants and interested parties should consult the Zoning Ordinance for important procedural and substantive requirements, and inquire of the City Planning and Code Administration (301-258-6330) for further information and assistance.

1.2. Public meetings and hearings of the Board of Appeals shall generally be held in the Council Chambers of City Hall, 31 South Summit Avenue, Gaithersburg, Maryland.

1.3. The Board of Appeals shall consist of five (5) members and one (1) alternate member who shall serve in the absence, disability, or recusal of any regular member. Unless serving during the absence, disability, or recusal of any regular Board of Appeals member, an alternate Board of Appeals member shall not vote or participate in discussion, examination or deliberations of the Board of Appeals involving a pending case. At least three (3) persons appointed to the Board of Appeals must be present to constitute a quorum for the conduct of a hearing.

1.4. Generally, meetings of the Board of Appeals will be held once a month on the second Thursday of the month. However, meetings may be held as often as necessary, at the call of the Chairperson or upon request of at least two (2) Board of Appeals members.

1.5. The City Planning and Code Administration, subject to the direction of the Board of Appeals and its Chairperson, shall conduct all correspondence of the Board of Appeals, send out all notices required by these rules, attend all hearings of the Board of Appeals and such other meetings as the Board of Appeals shall designate, keep the official records, minutes, and recordings of the proceedings, compile all required records, which may include official agency transcripts, maintain the necessary files and indexes and be responsible for drafting resolutions and securing the signature of the Chairperson.

1.6. In fulfilling its legislative mandate, the Board of Appeals may exercise the following powers:

- a. subject to the prohibitions on ex parte communications, hold conferences with parties and or their legal representatives to clarify issues and expedite full and fair handling of a case;
- b. on motion by any party, or by the Board of Appeals, dispose of procedural requests, including but not limited to the following motions: to amend, to consolidate petitions, to reopen the record of any case in order to receive additional evidence or information, to rehear decisions, or reconsider decisions;
- c. on motion by any party, or by the Board of Appeals, introduce into the record documentary or other evidence, provided that all parties are given reasonable notice;

- d. ask parties to submit proposed findings of fact and memoranda of law;
- e. require parties to provide additional information about the application;
- f. waive minor procedural defects or errors that do not affect substantive rights of the parties in order to proceed on the merits;
- g. take any other action necessary to carry out the intent of the Zoning Ordinance; and
- h. exercise all other powers included in Article VII, Chapter 24 of the Code of the City of Gaithersburg.

2.0. Filing of Appeals, Petitions

2.1. All petitions to the Board of Appeals shall be filed with the City Planning and Code Administration on appropriate forms provided by the department. No petition shall be accepted by the City Planning and Code Administration for filing unless it contains complete and accurate information, meets all applicable requirements under Section 24-188 of the Zoning Ordinance, and is accompanied by the current processing fee set forth by resolution of the Mayor and City Council.

2.2. When the Board of Appeals finds that any information or documents required to be filed pursuant to Section 24-188 of the Zoning Ordinance are not sufficiently detailed to either present or make a final decision, the Board of Appeals may require additional information or documentation to be provided.

2.3. Reports of expert witnesses for any petitioner must be submitted not later than ten (10) days after the time of the initial filing unless permission to file at a later date is granted by the Board of Appeals. Expert reports other than those of a petitioner must be submitted not later than fifteen (15) days before the public hearing.

2.4. The following prehearing requirements shall apply to all petition requests for special exception, variance or administrative review:

- a. The petitioner or the legal representative of the petitioner must file a prehearing statement at the Department of Planning and Code Administration in duplicate no later than fifteen (15) days prior to the date set for the hearing, with copies to all parties of record. The statement must include the following information:
 - (1) a statement of the grounds upon which the petition is based;
 - (2) copies of all reports, studies and other documents and plans intended to be introduced at the hearing;
 - (3) a summary of expert testimony and credentials which will be proffered at the hearing;
 - (4) identity of all witnesses who will testify; and
 - (5) estimated time required for presentation.
- b. Groups or organizations intending to appear in opposition to a petition whether or not represented by counsel, must file a similar prehearing statement no later than seven (7) days prior to the date of the hearing. If a group or organization fails to file a pre-hearing statement as required by these rules, the Board may preclude the group or organization from participation in the proceeding on the petition.
- c. The information submitted in compliance with Rules 2.4.a. and 2.4.b. above shall be construed as an intent only to submit such information or to provide testimony from witnesses, but neither the petitioner nor the opposition are bound to

introduce the same at the hearing.

- d. Failure by a party to comply with Rule 2.4.a. and/or 2.4.b. may be cause for refusal to accept the pre-hearing statement and/or postponement, continuation of the hearing, and/or decisions to leave the record open for a specified time to permit rebuttal evidence. Costs for advertisements or official agency transcripts required due to a continued or postponed hearing must be paid by the party who failed to comply with the prehearing statement requirement. In addition, the Board is empowered to dismiss an appeal or deny the introduction into the record any report, study or plans or prohibit the testimony of a party's witness who is not identified due to the failure of a party to comply with Rules 2.4.a. and /or 2.4.b..

2.5. All petitions for special exception and variance shall be referred immediately to the required official or agency designated in Section 24-188 (d) for comment and recommendation.

2.6. In all matters before the Board of Appeals, documents required to be filed are available for review by all interested persons.

2.7. A petitioner may amend a petition without the consent of the Board of Appeals under the following circumstances:

- a. Any time prior to the submission of the prehearing statement required to be filed in Rule 2.4. of these Rules;
- b. Amendments requested by the city planning commission or other city, county or state agency;
- c. Amendments which are consented to by all parties of record;
- d. Amendments to correct minor errors in petitioner's submission; or
- e. Amendments requested by the Board of Appeals during the hearing or at any time before the record is closed.

Any other amendments not specified above shall be filed only upon the consent of the Board of Appeals following a request to amend with due notice to all parties of record and an opportunity for other parties to respond in writing, orally at the hearing, or by continuing the hearing, as the Board of Appeals shall determine.

3.0. Official Records and Calendar

3.1. Upon filing the appropriate form, required information and documents, and paying the required filing fee, each case will be assigned, by the City Planning and Code Administration, a serialized case number and an official file shall be opened which shall contain all exhibits of record or references to exhibits which, due to size or bulk, cannot be maintained in the file. All exhibits shall be serially numbered and an exhibit list prepared.

3.2. Each case shall be placed upon the calendar of the Board of Appeals for public hearing by the City Planning and Code Administration in conformance with all applicable notice requirements.

3.3. Cases shall be heard in the order in which they appear on the calendar, unless the Chairperson shall find reasonable cause for changing the order of the hearing and that such change will not prejudice any party of record.

4.0. Notice of Hearings

4.1. Public notice of the scheduled hearing on any special exception, variance, or when applicable, an administrative review, shall be given in accordance with Section 24-188 (e) of the Zoning Ordinance.

4.2. At the time of mailing notices, pursuant to Rule 4.1. above, written notice shall also be given to the following:

- a. persons who have requested notice;
- b. interested persons, community, civic or business organizations as may be determined by the Board of Appeals, the City Manager, or the City Planning and Code Administration.

5.0. Hearings

5.1. It shall be the duty of the Board of Appeals to inquire fully into the facts of each case. In this respect, the Board of Appeals shall have the authority to:

- a. request the attendance of witnesses and submission of documents;
- b. regulate the course of any hearing;
- c. rule on offers of proof and receive relevant evidence;
- d. exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence;
- e. hold conferences for simplification of the issues by consent of the parties;
- f. dispose of, or rule upon, procedural requests and order hearings consolidated or reopened;
- g. call, examine, and cross-examine witnesses and admit or deny into the record documentary or other evidence;

5.2. All evidence and exhibits shall be subject to admission into the record by the Board of Appeals. Evidence and exhibits shall be duly numbered, made a part of the record, and included in the case file. The Board of Appeals may require photographs or reproductions to be substituted in lieu of large or bulky exhibits.

5.3. The Board of Appeals may request that an attorney advisor and/or representative from City staff be present at any public meeting, public hearing or authorized executive session to render advice or assistance. Any advice or assistance rendered by an attorney advisor and/or representative from the City staff shall not be considered an *ex parte* communication.

5.4. Persons, groups or organizations intending to appear before the Board of Appeals who are unable to attend a scheduled hearing may designate a replacement spokesperson. However, the Board of Appeals will not be required to continue a hearing to another date due to the failure of a person, group or organization or their spokesperson to appear.

5.5. The order of procedure for the presentation of evidence shall be as follows, with examination by the Board of Appeals at any time:

- a. presentation of the official record, notation of any objections to any part of the record, and other preliminary matters;
- b. presentation of evidence and testimony by the petitioner;
- c. presentation of evidence and testimony of interested administrative officials and staff;

- d. presentation of information and testimony by those in opposition to petitioner's request;
- e. testimony by other interested persons or organizations;
- f. rebuttal evidence by petitioner;
- g. formal receipt into evidence of the record by the Board of Appeals; and
- h. closing statements by each side.

5.6 Cross-examination of witnesses shall be permitted; however, questioning must be confined as closely as possible to the scope of the direct testimony of the witness. Repetitious questions and examination on irrelevant matters will not be permitted.

5.7 The petitioner shall have the burden of proof, which shall include the burden of going forward with the evidence and the burden of persuasion on all questions of fact to be determined by the Board of Appeals.

5.8 The Chairperson, in his/her discretion, may impose reasonable time limitations on the presentation of evidence and testimony at a hearing, or on the length of the hearing, in order to facilitate the orderly and expeditious conduct of the hearing.

5.9 A hearing may be continued or adjourned from time to time. If the time and place of the continued or adjourned hearing is publicly announced at the scheduled hearing, no further notice shall be required.

5.10 The Chairperson may require a group or organization to designate a spokesperson to coordinate and present testimony. The only person who may testify on behalf of the group or organization shall be the spokesperson. The spokesperson for an individual or individuals who is not a lawyer will not be permitted to cross-examine witnesses.

5.11 Site visits by members of the Board of Appeals shall be permitted. Board of Appeals members conducting a site visit shall either recite orally into the record or place a written statement into the record reciting the time and date of the site visit, its location, the purpose of the visit and general observations. All parties of record shall be notified of the site visit and shall have an opportunity to respond at the hearing or in writing not less than five (5) days after receipt of the notice of the site visit. In order to accommodate any timely response, the record shall automatically be reopened for the purpose of receiving the response.

Casual travel by any site or observation of any site under consideration by the Board of Appeals for administrative review, special exception or variance, the purpose of which is unrelated to the matter under consideration, shall not be deemed as a site visit and need not be reported.

6.0 Decisions

6.1. All actions and decisions of the Board of Appeals on any matter requiring a public hearing shall be by written resolution. Each resolution shall show, among any other required contents, the members participating, and their respective votes in the case.

6.2. Any member of the Board of Appeals who was not present for all or any part of a hearing may only participate and vote on the petition or appeal if said member reads the official agency transcript or listens to the recorded testimony, reviews the exhibits of record, reviews the minutes of any related public session, and so indicates by written statement in the case file.

6.3. The Board of Appeals shall decide any petition for any matter not later than sixty (60) days from the date of the conclusion of the public hearing thereon, unless the Board of Appeals, by majority vote and entered in its minutes, extends such period of time and provides written notification to all parties.

6.4 Any resolution adopted, reflecting a decision on a special exception, variance or administrative review, shall be in writing and contain findings of fact and conclusions as to legal issues supported by the evidence of record.

6.5. Notification of any such decision shall be given in accordance with Section 24-190 (d) of the Zoning Ordinance.

6.6. Appeals of any decision of the Board of Appeals shall be pursuant to Section 24-193 of the Zoning Ordinance.

7.0 Rehearing and Reconsideration

7.1 The Board of Appeals may rehear or reconsider its decisions pursuant to Section 24-190A of the Zoning Ordinance.

8.0 Officers

8.1. The Board of Appeals shall annually elect a Chairperson and Vice Chairperson at its first meeting held following January 1st. The alternate Board of Appeals Member shall not be eligible to run for office.

8.2. The Chairperson shall preside at all meetings and hearings of the Board of Appeals. In the event of the absence, disability, or recusal of the Chairperson, the elected Vice Chairperson shall preside.

8.3. In the event of the absence, disability, or recusal of both the Chairperson and the Vice Chairperson, the member with the most seniority shall preside.

8.4. In the event that the Chairperson resigns, the Vice Chairperson will fill out the unexpired term of the Chairperson and an election for a Vice Chairperson shall be held at the next regularly scheduled meeting.

8.5. Any participating member may nominate someone for office. All nominations are required to be seconded.

8.6. Any member may nominate himself or herself. The nomination is required to be seconded.

9.0 Records and Minutes

9.1. The designated staff liaison to the Board of Appeals shall maintain and supervise the custody of all official records and minute books, which shall be kept current. Official records of each case shall include records of testimony and exhibits submitted during the hearing and at such time, or times, the record may be open. The staff liaison shall have the authority to organize the record in a logical and coherent manner, including the authority to remove advertisements, confidentiality statements, and duplicative correspondence that are attached to e-mails.

9.2. The staff liaison shall maintain official records of the petition case numbers, the name and address of the applicant, a short description by street, number, or otherwise, of the premises involved in the petition and, where appropriate, the nature of the petition and final disposition of the case.

9.3. The minutes shall record the resolution pertaining to each case acted on, together with the vote of each member upon each question, or if absent or failing to vote, indicating such fact, all of which shall be a public record.

9.4. A case file of each petition shall be maintained separate from the minutes. The case file will contain all exhibits, correspondence and materials pertinent to the particular case.

10.0 Communications

10.1. The Board of Appeals shall not consider any ex parte or private communication from any person or organization, whether oral or written, which may relate to the merits of any appeal, special exception or variance pending before the Board of Appeals. Any such communication must be noted in the record of the case and the parties shall be given an opportunity to comment thereon.

10.2. Nothing contained herein shall preclude the Board of Appeals from obtaining any advice, counsel or assistance from City staff provided said staff member is not a party to or directly involved in a pending matter for which the advice, counsel, or assistance is sought.

11.0 Rule Changes and Supplement

11.1 Suspension of Rules – The suspension of any rule of procedure shall require the unanimous concurrence of those members of the Board of Appeals present and voting.

11.2 Repeal or Amendment of Rules – Any member of the Board of Appeals who wishes to amend the rules must submit a motion, order or resolution to repeal or amend a rule of the Board of Appeals in writing to the Board of Appeals at least 45 days prior to a meeting, together with the written text of any proposed amendment. The repeal or amendment of any rules of the Board of Appeals shall require the presence of five (5) Board members, which may include the alternate, and shall be by the majority of the Board.

11.3 Robert's Rules of Order – These Rules of Procedure and the Zoning Ordinance of the City of Gaithersburg shall govern the operations of the Board of Appeals. To the extent that any action, practice or procedure is not covered by the Rules of Procedure or the Zoning Ordinance of the City of Gaithersburg, the rules of parliamentary practice and procedure, as set forth in the most current edition of Robert's Rules of Order, shall govern.

These Rules of Procedures adopted this
_____day of, _____
by the City Board of Appeals.

Harvey Kaye, Chairperson
Board of Appeals

Adjournment